Rosmaini bin Abdul Raof v Public Prosecutor and another appeal

HIGH COURT (JOHOR BAHRU) — CRIMINAL APPEAL NOS JA-42S-7–12 OF 2024 AND JA-42H-13–12 OF 2024
ATAN MUSTAFFA J
5 JANUARY 2026

Criminal Procedure — Appeal — Appeal against conviction and sentence — Intentionally causing grievous hurt — Offence under ss 325 and 326A of Penal Code — Prosecution relied on circumstantial evidence — Prosecution relied on testimony of accused's former neighbour ('SP1') who accused contacted for assistance after committing offence — Accused convicted and sentenced to ten years' imprisonment — Accused appealed against conviction and sentence — Prosecution appealed against inadequacy of sentence imposed — Whether trial judge erred in finding that SP1 was credible witness — Whether conviction based on circumstantial evidence was unsafe — Whether trial judge erred in refusing to recall SP1 — Whether SP1's evidence constituted inadmissible hearsay — Whether investigative deficiencies warranted acquittal — Whether reasonable doubt was raised at the end of defence case — Whether sentence of ten years' imprisonment was manifestly inadequate such as to warrant appellate intervention — Criminal Procedure Code s 182A — Evidence Act 1950 s 17 — Penal Code ss 325 & 326A

The accused was charged under s 325 read with s 326A of the Penal Code for intentionally causing grievous hurt to his wife ('the victim'). The medical examination revealed that the victim sustained severe injuries and as a result thereof, she was unable to move her limbs or care for herself. The prosecution's case was based on circumstantial evidence. In this regard, the prosecution had relied on the evidence of 11 witnesses including SP1, the accused's former neighbour who the accused contacted for assistance after the incident. At the end of the prosecution's case, the sessions court judge ('the trial judge') found that whilst the victim could not give evidence, the circumstantial evidence when taken cumulatively formed a chain pointing to the accused and no other person as having committed the offence. At the defence stage, the trial judge rejected the accused's application to recall SP1 for cross-examination following the emergence of exhs D45 (SP1's statutory declaration) and D47 (a police report made by SP1) which allegedly presented a narrative that was totally different compared to SP1's testimony during the prosecution stage. The trial judge opined that allowing such application would constitute 'an attempt to a second bite of the cherry'. At the end of the trial, the accused was convicted and sentenced to ten years imprisonment. Aggrieved, the accused filed an appeal against both conviction and sentence whilst the prosecution appealed against

the sentence. The issues to be determined by the court in the present appeals were as followed: (a) whether the trial judge erred in finding that SP1 was credible witness; (b) whether the conviction based on circumstantial evidence was unsafe; (c) whether the trial judge erred in refusing to recall SP1; (d) whether SP1's evidence constituted inadmissible hearsay; (e) whether investigative deficiencies warranted acquittal — the alleged deficiencies were in relation to: (i) the failure to investigate the implications of a T-shirt found at the scene which, upon analysis, yielded no DNA from either the accused or the victim; (ii) the alleged inaccuracy in the crime scene sketch which failed to depict a rear door; and (iii) the failure to investigate a report made by SP1 three years after the original investigation; (f) whether reasonable doubt was raised at the end of the defence case; and (g) whether the sentence of ten years' imprisonment was manifestly inadequate such as to warrant appellate intervention.

Held, dismissing both appeals and affirming the conviction and sentence:

(1) The court found no error in the trial judge's assessment of SP1's credibility. The trial judge had applied the correct legal principles, considered all relevant factors, and reached conclusions that were entirely justified by the evidence and circumstances of the case. The conviction based upon SP1's sworn testimony was safe and satisfied all legal requirements. The trial judge was in the best position to assess SP1's credibility, having observed SP1 testified, and the trial judge's findings on credibility were entitled to great weight. The accused had failed to demonstrate any substantial or compelling reason for the court to disturb those findings (see para 54).

(2) The trial judge had properly evaluated all the evidence in accordance with the principles governing circumstantial evidence. The learned judge correctly identified the links in the evidential chain: (a) the accused was the only person with access to the victim at the material time; (b) the accused admitted to SP1 that he had fought with his wife using his hands at 6am; (c) the accused admitted to the victim's younger sister, SP6 that they had fought and he pushed the victim, causing her to hit her head; (d) the medical evidence established catastrophic brain injuries requiring emergency neurosurgery; (e) the evidence established a pattern of prior domestic violence between the accused and the victim; (f) the accused attempted to flee when the police sought to arrest him; and (g) the accused failed to challenge crucial aspects of SP1's testimony during cross-examination, amounting to acceptance of that evidence. When these circumstances were considered together, as the trial judge properly did, they formed a complete chain that pointed irresistibly and exclusively to the accused's guilt. There was no gap in the chain, no missing link, no reasonable alternative explanation. The trial judge's conclusion that the prosecution had proven its case beyond reasonable

doubt on the basis of this circumstantial evidence was entirely correct and displayed no error of law or fact (see paras 88–89).

(3) The trial judge's decision to refuse both applications to recall SP1 was not only within her discretion but was the correct exercise of that discretion on the facts of the present case. The trial judge had carefully analysed the legal principles, meticulously examined the grounds for the applications, considered all relevant factors including the suspicious timing, the failure to put the new version to witnesses during trial, SP1's lack of cooperation, and the learned judge's own observations of SP1's demeanour, and reached a well-reasoned conclusion that the applications were made for improper purposes and that the recall of SP1 was not essential to a just decision of the case (see para 121).

(4) SP1's evidence was not hearsay evidence. SP1 testified as to matters within her direct personal knowledge and observation. The accused's statement to SP1 constituted an admission and was admissible under s 17 of the Evidence Act 1950. Police Report P1, being SP1's own first information report about matters within her personal knowledge, coupled with the fact that SP1 herself testified in court and was subjected to cross-examination, did not constitute hearsay. The trial judge did not err in admitting and relying upon SP1's evidence (see para 142).

(5) In relation the alleged investigative deficiencies, the fact that one particular item yielded no DNA did not create reasonable doubt when numerous other exhibits contained incriminating DNA evidence. The omission from a rough sketch of a feature whose existence and condition were established through sworn testimony did not undermine the prosecution's case. The failure to investigate a belated report made three years after the investigation was completed, particularly when the maker of that report failed to cooperate, did not constitute an investigative deficiency. There was no error in the trial judge's findings on these matters. The trial judge had properly evaluated the evidence and correctly concluded that none of the alleged deficiencies were material or affected the safety of the conviction. Not every investigative deficiency or procedural irregularity would render a conviction unsafe. The question was whether the alleged deficiency had occasioned a failure of justice or rendered the conviction unsafe. In the present case, it had not (see paras 163–164).

(6) The trial judge's finding that the accused failed to raise a reasonable doubt was a finding properly arrived at after careful consideration of all the evidence. The accused had not established any ground to interfere with the conviction on this basis. The trial judge had correctly applied *Mat v Public Prosecutor* [1963] 1 MLJ 263 and properly concluded that while the accused bore only an evidential burden to raise a reasonable doubt, he had failed to discharge even this burden. The court found that the trial

judge had properly discharged her duty under s 182A of the Criminal Procedure Code and the conviction was therefore safe and satisfied all legal requirements (see paras 184 & 186).

(7) The prosecution had not discharged its burden of demonstrating that the sentence of ten years' imprisonment was manifestly inadequate or that the trial judge erred in principle in arriving at that sentence. The trial judge's grounds of judgment revealed a careful, considered, and principled approach to sentencing. The learned trial judge applied the correct legal framework, considered all relevant factors, gave proper weight to the public interest and the need for deterrence, took into account the victim impact evidence and the catastrophic consequences of the offence, and imposed a sentence that reflected the gravity of the offence whilst remaining within the proper range. The sentence adequately addressed the gravity of the offence and the harm caused to the victim. There was no error in principle. The sentence was not manifestly inadequate. Therefore, the threshold for appellate intervention had not been met (see para 215).

[Bahasa Malaysia summary

Tertuduh telah dituduh di bawah s 325 yang dibaca bersama s 326A Kanun Keseksaan kerana sengaja menyebabkan kecederaan parah kepada isterinya ('mangsa'). Pemeriksaan perubatan mendedahkan bahawa mangsa mengalami kecederaan parah dan akibatnya, dia tidak dapat menggerakkan anggota badannya atau menguruskan dirinya sendiri. Kes pendakwaan adalah berdasarkan keterangan mengikut keadaan. Dalam hal ini, pihak pendakwaan telah bergantung pada keterangan 11 saksi termasuk SP1, iaitu bekas jiran tertuduh yang dihubungi oleh tertuduh untuk mendapatkan bantuan selepas kejadian tersebut. Pada akhir kes pendakwaan, hakim mahkamah sesyen ('hakim bicara') mendapati bahawa walaupun mangsa tidak dapat memberi keterangan, keseluruhan keterangan mengikut keadaan apabila diambil secara kumulatif membentuk rantaian yang menunjukkan bahawa hanya tertuduh dan tiada orang lain yang melakukan kesalahan tersebut. Pada peringkat pembelaan, hakim bicara menolak permohonan tertuduh untuk memanggil semula SP1 untuk pemeriksaan balas berikutan kemunculan eksh D45 (akuan berkanun SP1) dan D47 (laporan polis yang dibuat oleh SP1) yang didakwa mengemukakan naratif yang sama sekali berbeza berbanding keterangan SP1 semasa peringkat pendakwaan. Hakim bicara berpendapat bahawa membenarkan permohonan sedemikian akan dianggap sebagai 'an attempt to a second bite of the cherry'. Pada akhir perbicaraan, tertuduh telah disabitkan bersalah dan dijatuhkan hukuman penjara sepuluh tahun. Tertuduh yang terkilan telah memfailkan rayuan terhadap sabitan dan hukuman manakala pihak pendakwaan merayu terhadap hukuman tersebut. Isu-isu yang perlu ditentukan oleh mahkamah dalam rayuan-rayuan semasa adalah seperti berikut: (a) sama ada hakim bicara terkhilaf dalam mendapati bahawa SP1

adalah saksi yang boleh dipercayai; (b) sama ada sabitan berdasarkan keterangan mengikut keadaan tidak selamat; (c) sama ada hakim bicara terkhilaf apabila enggan memanggil semula SP1; (d) sama ada keterangan SP1 merupakan dengar cakap yang tidak boleh diterima; (e) sama ada kekurangan dalam penyiasatan mewajarkan pembebasan — kekurangan yang didakwa adalah berkaitan dengan: (i) kegagalan untuk menyiasat implikasi kemeja-T yang ditemui di tempat kejadian yang, setelah dianalisis, tidak menghasilkan DNA daripada tertuduh atau mangsa; (ii) dakwaan ketidaktepatan dalam lakaran tempat kejadian jenayah yang gagal menggambarkan pintu belakang; dan (iii) kegagalan untuk menyiasat laporan yang dibuat oleh SP1 tiga tahun selepas siasatan asal; (f) sama ada keraguan munasabah ditimbulkan pada akhir kes pembelaan; dan (g) sama ada hukuman penjara sepuluh tahun tersebut jelas tidak mencukupi yang mewajarkan campur tangan rayuan.

Diputuskan, menolak kedua-dua rayuan, dan mengesahkan sabitan dan hukuman:

(1) Mahkamah tidak menemui apa-apa kekhilafan dalam penilaian hakim bicara terhadap kredibiliti SP1. Hakim bicara telah menggunakan prinsip perundangan yang betul, mempertimbangkan semua faktor yang berkaitan, dan mencapai kesimpulan yang sepenuhnya dijustifikasikan oleh keterangan dan keadaan kes tersebut. Sabitan berdasarkan keterangan bersumpah SP1 adalah selamat dan memenuhi semua keperluan perundangan. Hakim bicara berada dalam kedudukan terbaik untuk menilai kredibiliti SP1 setelah memerhatikan keterangan SP1, dan dapatan hakim bicara mengenai kredibiliti berhak mendapat pertimbangan yang sewajarnya. Tertuduh telah gagal menunjukkan apa-apa sebab yang kukuh atau meyakinkan untuk mahkamah mengganggu dapatan tersebut (lihat perenggan 54).

(2) Hakim bicara telah menilai semua keterangan dengan sewajarnya mengikut prinsip yang mengawal keterangan mengikut keadaan. Hakim yang bijaksana mengenal pasti dengan betul kaitan dalam rantaian keterangan: (a) tertuduh adalah satu-satunya orang yang mempunyai akses kepada mangsa pada masa yang material; (b) tertuduh mengakui kepada SP1 bahawa dia telah bergaduh dengan isterinya menggunakan tangannya pada jam 6 pagi; (c) tertuduh mengakui kepada adik perempuan mangsa, SP6 bahawa mereka telah bergaduh dan dia menolak mangsa, menyebabkan kepala mangsa terhantuk; (d) keterangan perubatan membuktikan kecederaan otak yang dahsyat yang memerlukan pembedahan saraf kecemasan; (e) keterangan membuktikan corak keganasan rumah tangga sebelum ini antara tertuduh dan mangsa; (f) tertuduh cuba melarikan diri apabila polis cuba menangkapnya; dan (g) tertuduh gagal mencabar aspek penting keterangan SP1 semasa pemeriksaan balas, yang bersamaan dengan penerimaan keterangan tersebut. Apabila keadaan-keadaan ini

dipertimbangkan bersama, seperti yang dilakukan oleh hakim bicara dengan sewajarnya, ia membentuk rantaian lengkap yang tidak boleh dinafikan yang menunjukkan secara eksklusif kepada kebersalahan tertuduh. Tiada jurang dalam rantaian tersebut, tiada rantaian yang hilang, tiada penjelasan alternatif yang munasabah. Kesimpulan hakim bicara bahawa pihak pendakwaan telah membuktikan kesnya melampaui keraguan munasabah berdasarkan keterangan mengikut keadaan ini adalah betul sepenuhnya dan tidak menunjukkan apa-apa kekhilafan undang-undang atau fakta (lihat perenggan 88–89).

(3) Keputusan hakim bicara untuk menolak kedua-dua permohonan untuk memanggil semula SP1 bukan sahaja berada dalam budi bicaranya tetapi merupakan pelaksanaan budi bicara yang betul terhadap fakta kes semasa. Hakim bicara telah menganalisis prinsip perundangan dengan teliti, meneliti dengan tekun alasan permohonan tersebut, mempertimbangkan semua faktor berkaitan termasuk masa yang mencurigakan, kegagalan untuk mengemukakan versi baharu kepada saksi semasa perbicaraan, kekurangan kerjasama daripada SP1, dan pemerhatian hakim bicara sendiri terhadap sikap SP1, dan mencapai kesimpulan yang munasabah bahawa permohonan tersebut dibuat untuk tujuan yang tidak wajar dan pemanggilan semula SP1 adalah tidak penting untuk keputusan kes yang adil (lihat perenggan 121).

(4) Keterangan SP1 bukanlah keterangan dengar cakap. SP1 memberi keterangan mengenai perkara-perkara yang berada dalam pengetahuan dan pemerhatian peribadinya secara langsung. Pernyataan tertuduh kepada SP1 merupakan pengakuan dan boleh diterima di bawah s 17 Akta Keterangan 1950. Laporan Polis P1, yang merupakan laporan maklumat pertama SP1 sendiri mengenai perkara-perkara yang berada dalam pengetahuan peribadinya, ditambah pula dengan fakta bahawa SP1 sendiri memberi keterangan di mahkamah dan tertakluk kepada pemeriksaan balas, tidak dianggap sebagai dengar cakap. Hakim bicara tidak terkhilaf dalam menerima dan bergantung pada keterangan SP1 (lihat perenggan 142).

(5) Berkaitan dengan dakwaan kekurangan dalam penyiasatan, hakikat bahawa satu item tertentu tidak menghasilkan DNA tidak menimbulkan keraguan munasabah apabila banyak ekshibit lain mengandungi keterangan DNA yang memberatkan. Peninggalan lakaran kasar ciri yang kewujudan dan keadaannya dibuktikan melalui keterangan bersumpah tidak menjejaskan kes pendakwaan. Kegagalan untuk menyiasat laporan yang dibuat dengan lewat iaitu tiga tahun selepas siasatan selesai, terutamanya apabila pembuat laporan tersebut tidak memberikan kerjasama, tidak membentuk kekurangan dalam penyiasatan. Tiada kekhilafan dalam dapatan hakim bicara mengenai perkara ini. Hakim bicara telah menilai keterangan dengan betul dan

membuat kesimpulan dengan betul bahawa tiada satu pun kekurangan yang didakwa adalah material atau menjejaskan keselamatan sabitan. Tidak semua kekurangan dalam penyiasatan atau ketidakteraturan prosedur akan menyebabkan sabitan tidak selamat. Persoalannya ialah sama ada kekurangan yang didakwa telah menyebabkan kegagalan keadilan atau menyebabkan sabitan tidak selamat. Dalam kes semasa, ia tidak menyebabkan kegagalan keadilan (lihat perenggan 163–164).

(6) Dapatan hakim bicara bahawa tertuduh gagal menimbulkan keraguan munasabah adalah dapatan yang dicapai dengan sewajarnya selepas pertimbangan yang teliti terhadap semua keterangan. Tertuduh tidak membuktikan apa-apa alasan untuk mengganggu sabitan atas dasar ini. Hakim bicara telah mengguna pakai kes *Mat v Public Prosecutor* [1963] 1 MLJ 263 dengan betul dan membuat kesimpulan dengan sewajarnya bahawa walaupun tertuduh hanya menanggung beban keterangan untuk menimbulkan keraguan munasabah, dia telah gagal melepaskan beban ini. Mahkamah mendapati bahawa hakim bicara telah melaksanakan tugasnya dengan sewajarnya di bawah s 182A Kanun Tatacara Jenayah dan oleh itu sabitan tersebut selamat dan memenuhi semua keperluan undang-undang (lihat perenggan 184 & 186).

(7) Pihak pendakwaan gagal melepaskan bebannya untuk menunjukkan bahawa hukuman penjara sepuluh tahun tersebut adalah jelas tidak mencukupi atau hakim bicara terkhilaf secara prinsip dalam menjatuhkan hukuman tersebut. Alasan penghakiman hakim bicara mendedahkan pendekatan yang teliti, dipertimbangkan, dan berprinsip terhadap hukuman. Hakim bicara yang bijaksana telah menggunakan kerangka kerja perundangan yang betul, mempertimbangkan semua faktor yang berkaitan, memberi perhatian yang sewajarnya kepada kepentingan awam dan keperluan untuk pencegahan, mengambil kira keterangan impak mangsa dan akibat buruk daripada kesalahan tersebut, dan menjatuhkan hukuman yang mencerminkan keseriusan kesalahan tersebut sambil kekal dalam julat yang betul. Hukuman tersebut menangani dengan secukupnya keseriusan kesalahan dan kemudaratan yang diakibatkan kepada mangsa. Tiada kekhilafan secara prinsip. Hukuman tersebut bukanlah jelas tidak mencukupi. Oleh itu, ambang untuk campur tangan rayuan tidak dipenuhi (lihat perenggan 215).]

Cases referred to

Ah Mee v PP [1967] 1 MLJ 220; [1967] 1 MLRA 291, FC (distd)
Balachandran v PP [2005] 2 MLJ 301, FC (refd)
Herchun Singh & Ors v PP [1969] 2 MLJ 209, FC (refd)
Jitweer Singh a/l Ojagar Singh v PP [2016] 4 MLJ 525, CA (refd)
Karam Singh v PP [1967] 2 MLJ 25, FC (distd)
Lai Kim Hon & Ors v PP [1981] 1 MLJ 84, FC (refd)
Lim Guan Eng v PP [1998] 3 MLJ 14, CA (refd)

A *Lim Kee Fu v PP and another appeal* [2020] 12 MLJ 260, CA (refd)
Mat v PP [1963] 1 MLJ 263 (folld)
Nagarujun a/l Arjunan v PP and another appeal [2021] 2 MLJ 599; [2021] MLRAU 4, CA (refd)
B *Pendakwa Raya lwn Mohd Saifuddin bin Aziz* [2021] MLJU 246; [2021] MLRHU 138, HC (refd)
PP v Chan Kok Poh [2021] MLJU 1979; [2021] MLRHU 1523, HC (refd)
PP v Dato' Seri Anwar bin Ibrahim (No 3) [1999] 2 MLJ 1, HC (refd)
PP v Jafa bin Daud [1981] 1 MLJ 315 (refd)
C *PP v Loo Choon Fatt* [1976] 2 MLJ 256 (refd)
PP v Saimin & Ors [1971] 2 MLJ 16 (refd)
R v Ball (1951) 35 Cr App Rep 164 (refd)
Ramli bin Kechik v PP [1986] 2 MLJ 33, SC (refd)
Subramaniam v PP [1956] 1 MLJ 220, PC (refd)
D *Suhani binti Mat Daud v PP* [2011] MLJU 655, HC (refd)
Teo Siaw Peng v PP [1993] 2 MLJ 364, HC (refd)
Teper v R [1952] AC 480 (refd)
Wong Swee Chin v PP [1981] 1 MLJ 212, FC (folld)

E **Legislation referred to**
Criminal Procedure Code ss 173, 173(j)(iii), (l)(i), 182A, 183A, 425, Chapters XVII, XX
Criminal Procedure Code 425
Evidence Act 1950 ss 8, 17, 32, 91
F Federal Constitution art 5(1)
Penal Code ss 325, 326A

Appeal from: Criminal Case No JA-62–88–06 of 2021 (Sessions Court, Johor Bahru)

G *Siti Fatimah bt Mamu (with Umar Faiz) (Deputy Public Prosecutor, Johor State Legal Advisor's Office) for the prosecution.*
Kamal Hisham bin Ja'afar (with Mohammad Nor bin Tamrin and Nor Aina Kamilah bt Zalizan) (Kamal Hisham & Assoc) for the accused.

H **Atan Mustaffa J:**

INTRODUCTION

I **[1]** On a fateful morning in May 2021, a wife lay grievously injured, her brain catastrophically damaged, unable to move her limbs or care for herself. Her husband stood accused of inflicting those injuries. The prosecution case rested largely on circumstantial evidence. The defence pointed to other possible perpetrators. After a full trial, the sessions court convicted and sentenced the husband to ten years' imprisonment.

[2] Now this court faces cross-appeals: the husband appeals against both conviction and sentence, contending the evidence was insufficient and contradictory; the prosecution appeals against sentence alone, arguing it was manifestly inadequate given the gravity of the offence and the legislative intent behind the enhanced sentencing provisions for domestic violence.

[3] At the heart of these appeals lie fundamental questions about the evaluation of circumstantial evidence, the assessment of witness credibility, and the proper approach to sentencing in cases involving grievous hurt to a spouse.

BACKGROUND FACTS

[4] The victim is Jahidah bt Nordin @ Sylvester, aged 42 years at the material time. The accused is Rosmaini bin Abdul Raof. They were married in September 2020.

[5] At the end of March 2021, the victim and accused moved in together to live as husband and wife at Block B, Unit 02–09, Scott Tower, Jalan Tani, Kampung Aman, Larkin, in the district of Johor Bahru Selatan, in the state of Johor Darul Takzim. They began cohabiting at this address on or about 21 March 2021 or 22 March 2021.

[6] On 4 May 2021, at approximately 6am, the incident that forms the subject matter of this case occurred at the said residence. On that morning, the accused contacted Makerin ak Gichian ('SP1'), a former neighbour who resided at Pangsapuri Larkin Utama, requesting assistance. According to CCTV footage, the accused and SP1 were recorded entering the residence at 9.18am on 4 May 2021. They returned again at approximately 11.02am.

[7] Upon entering the residence, the victim was found lying unconscious. The accused borrowed a wheelchair from the security guard at Scott Tower. The victim was transported to Hospital Sultanah Aminah, Johor Bahru, arriving at approximately 11.40am or around midday on 4 May 2021.

[8] Medical examination revealed that the victim had sustained severe injuries. The medical report (exh P35) documented that the victim was admitted on 4 May 2021 with a classification of alleged domestic violence. Upon admission, the victim's consciousness level was recorded as E1V1M3 on the Glasgow Coma Scale, indicating severe impairment of consciousness. The victim presented with quadriplegia.

[9] Imaging studies revealed subdural haemorrhage at the left convexity, left tentorial and posterior interhemispheric region with mass effect and effacement of the basal cistern. Additional injuries included a right tenth rib

fracture, facial bone fractures, and transverse process fractures at the left L2 and L3 vertebrae and the right L4 vertebra. The victim underwent emergency surgical intervention on 4 May 2021, specifically a left decompressive craniectomy with clot evacuation and intracranial pressure monitoring. The prognosis indicated that the victim remained in a coma and was totally dependent.

[10] On 5 May 2021, SP1 lodged a police report at Balai Polis Larkin (report number LARKIN/003956/21) (exh P1), detailing the events of 4 May 2021.

[11] The accused was charged in the Sessions Court at Johor Bahru on 17 June 2021 under s 325 read with s 326A of the Penal Code for intentionally causing grievous hurt to his spouse. The accused pleaded not guilty to the charge.

[12] The trial commenced before the Sessions Court Johor Bahru presided by Puan Fatimah bt Zahari, the learned sessions court judge. The prosecution called eleven witnesses. Trial proceedings were conducted on various dates in 2022, 2023, and 2024.

[13] On 17 January 2024, the learned sessions court judge called upon the accused to enter his defence. The defence case was conducted on various dates, and judgment was delivered on 9 December 2024. The accused was convicted and sentenced to ten years' imprisonment from the date of judgment (9 December 2024).

THE APPEALS BEFORE THIS COURT

[14] Two appeals are before this court:

(a) Appeal JA-42S-7–12 of 2024 (accused's appeal): this is the defence appeal filed by Rosmaini bin Abdul Raof on 19 December 2024 challenging both his conviction and sentence. The petition of appeal dated 15 March 2025 lists 21 separate grounds of appeal, which the defence's written submissions strategically consolidated into five main arguments addressing: (1) the credibility of SP1; (2) the safety of conviction based on circumstantial evidence; (3) the refusal to recall SP1 for cross-examination; (4) the admissibility of SP1's evidence as hearsay; and (5) investigative deficiencies. The defence contends these errors created reasonable doubt warranting acquittal, or alternatively that the sentence was excessive; and

(b) Appeal JA-42H-13–12 of 2024 (prosecution's cross-appeal): this is the prosecution's cross-appeal filed on 21 December 2024 challenging only the adequacy of the sentence imposed. The prosecution argues that the

ten-year imprisonment term was manifestly inadequate given the severity of the injuries, the domestic violence context, and relevant sentencing principles.

[15] Both appeals were heard together before this court on 17 October 2025, with a stay order granted on 25 February 2025 pending the appeal outcome.

[16] Given that this case involves cross-appeals, strict adherence to the terminology of 'appellant' and 'respondent' would be confusing, as each party is an appellant in one appeal and a respondent in the other. For clarity and consistency throughout this judgment, I shall refer to the parties as the 'accused' (Rosmaini bin Abdul Raof) and the 'prosecution' (public prosecutor). This approach avoids ambiguity and ensures that the reader can follow the analysis without confusion as to which party is advancing which argument.

THE SESSIONS COURT JUDGMENT

[17] The learned sessions court judge delivered judgment on 9 December 2024 after conducting a full trial that spanned several dates across 2022, 2023, and 2024. The prosecution called eleven witnesses to establish its case. At the conclusion of the prosecution case on 17 January 2024, the learned judge found that a prima facie case had been established and called upon the accused to enter his defence. The accused elected to give evidence on oath and called five defence witnesses. After evaluating the entirety of the evidence, the learned sessions court judge convicted the accused and sentenced him to ten years' imprisonment from the date of judgment.

[18] In her critical finding on the establishment of a prima facie case, the learned sessions court judge held at para [51] of her grounds of judgment:

> Mahkamah mendapati kesemua elemen pertuduhan berjaya dibuktikan. Walau pun mangsa tidak dapat memberikan keterangan (telah dilakukan prosiding secara zoom di hadapan mahkamah ini menunjukkan mangsa masih terlantar tidak bermaya, tidak mampu bercakap dan/atau tidak mampu memberi respon) untuk menceritakan apa yang berlaku namun berdasarkan keterangan ikut keadaan yang diambil secara kumulatif membentuk suatu rantaian keterangan yang menjurus kepada OKT dan tidak orang lain yang melakukan kesalahan tersebut.

[19] This finding established that whilst the victim could not give evidence, the circumstantial evidence when taken cumulatively formed a chain pointing to the accused and no other person as having committed the offence.

[20] At para [52] of her grounds, the learned sessions court judge concluded the maximum evaluation of the evidence:

A

> Berdasarkan penilaian maksima mahkamah ke atas keterangan yang dikemukakan, mahkamah mendapati kesemua inti pati pertuduhan telah berjaya dibuktikan dan oleh itu pihak pendakwaan telah membuktikan kes prima facie terhadap tertuduh. Tertuduh diperintahkan untuk membela diri terhadap pertuduhan di bawah s 325/326A Kanun Keseksaan.

B

[21] This finding affirmed that all essential elements of the charge had been successfully proved and that the prosecution had established a prima facie case, requiring the accused to enter his defence under s 325 read with s 326A of the Penal Code.

C

[22] On the critical issue of refusing to recall SP1 for cross-examination following the emergence of exhs D45 and D47 during the defence stage, the learned sessions court judge addressed this matter comprehensively. At para [70] of her grounds, the learned judge held:

D

> Mahkamah oleh itu bersetuju dengan apa yang dinyatakan dalam afidavit jawapan TPR bahawa seandainya permohonan ini dibenarkan ini adalah peluang atau satu 'pintu belakang' untuk OKT mengubah naratif perjalanan kes ini atau akan memberi satu ruang dan peluang kepada pihak pembelaan untuk mewujudkan satu

E

> versi cerita baru yang tidak menyokong kesinambungan versi pendakwaan yang lalu yang telah pun dibuktikan oleh pihak pendakwaan.

[23] At para [71], the learned judge concluded that allowing the application would constitute 'an attempt to a second bite of the cherry' and accordingly

F

rejected the application, directing the accused to give sworn evidence.

[24] In relation to sentencing, the learned sessions court judge applied established judicial principles comprehensively. At para [106] of her grounds, the learned judge stated:

G

> Semasa menggunakan budibicara menjatuhkan hukuman, mahkamah telah memberi keutamaan kepada faktor kepentingan awam. Apa yang diharapkan, hukuman tersebut, selain sebagai satu bentuk hukuman balasan (*punitive*) ia juga dapat mencegah OKT daripada mengulangi perbuatan tersebut (*deterrence*) dan

H

> dapat merubahnya menjadi insan lebih baik dengan tidak melakukan kesalahan pada masa akan datang (*reformative*).

[25] At para [107], the learned judge explained that in imposing the sentence of ten years' imprisonment, the court took into account the remand

I

period of one year and two months already served, noting that the maximum sentence for an offence under ss 325/326A of the Penal Code is 14 years. The court considered the combined period of imprisonment reasonable and sufficient. At para [108], the learned judge held:

> Mahkamah turut berpandangan bahawa tempoh penjara yang lebih ringan adalah

tidak munasabah dan tidak justified mengambil kira keseriusan kesalahan yang dilakukan. Tindakan OKT telah sama sekali memadam atau memusnahkan kehidupan mangsa di dunia ini.

[26] This finding emphasised that a lighter sentence would be unreasonable and unjustified given the seriousness of the offence, as the accused's actions had completely erased or destroyed the victim's life in this world.

THE ACCUSED'S APPEAL (JA-42S-7–12 OF 2024)

Analysis and findings of the court

Whether the learned sessions court judge erred in finding that SP1 was a credible witness

[27] The accused submitted that the learned sessions court judge erred both in fact and law when finding that SP1 (Makerin ak Gichian) was a credible witness. The accused emphasised that the prosecution's case rested entirely on circumstantial evidence, and that SP1 was the cornerstone of the prosecution's case.

[28] According to the accused, after SP1 completed giving sworn oral testimony, two highly material documents emerged during the defence stage: (a) a statutory declaration made by SP1 on 23 January 2024 (exh D45); and (b) a police report made by SP1 on 21 March 2024 (exh D47). The accused contended that these two documents presented a narrative that was '360 degrees different' compared to SP1's testimony during the prosecution stage, thereby tarnishing SP1's credibility.

[29] The accused relied on the principle in *Ah Mee v Public Prosecutor* [1967] 1 MLJ 220; [1967] 1 MLRA 291, where it was decided by the Federal Court that s 91 of the Evidence Act 1950 'applies equally to criminal trials no less than to civil proceedings' and categorically states that 'in all cases in which any matter is required by law to be reduced to the form of document, no evidence shall be given in proof of the terms of such matter except the document itself'. The accused argued that since both exhs D45 and D47 were made pursuant to legal provisions, the entire contents recorded in both documents should be accepted as 'best evidence' superseding other contradictory evidence, including oral evidence.

[30] The accused further submitted that these documentary exhibits should speak for themselves and that the learned trial judge admitted them as defence

A exhibits. The accused applied to recall SP1 to cross-examine her on these documents, but this application was vigorously opposed by the prosecution and was not allowed by the court.

B **[31]** The prosecution submitted that the learned sessions court judge did not err in finding SP1 credible. The prosecution emphasised several critical factors.

[32] First, the timing of exhs D45 and D47 was highly suspicious. Exhibit D45 (the statutory declaration) was made on 23 January 2024, only six days after the accused was called to enter his defence on 17 January 2024. Exhibit C D47 (the second police report) was made on 21 March 2024, precisely two months after the accused was called to enter his defence. The prosecution argued that throughout the nearly two-year trial, not once was the 'new version' contained in these documents put to any prosecution witness during cross-examination in accordance with the well-established principle in *Wong* D *Swee Chin v Public Prosecutor* [1981] 1 MLJ 212 (Federal Court). The three-year gap between the first police report (P1) and the second report (D47) underscored the suspect nature of these documents and strongly suggested afterthought and possible collusion between the accused and SP1.

E **[33]** Second, the learned sessions court judge, who had the distinct advantage of observing SP1's demeanour when she testified, made a clear and unequivocal finding that SP1 gave evidence naturally and there was no sign that she was pressured or threatened. This assessment of credibility by the trial F judge, based on direct observation, is entitled to the greatest weight.

[34] Third, the documentary evidence in D45 and D47 was contested evidence. These documents were tendered through witnesses who had no personal knowledge of their contents and could not verify their accuracy. The G reliability and authenticity of the statements contained in these documents were disputed by the prosecution. In contrast, SP1's oral testimony in court was given under oath, in the presence of the learned sessions court judge who could observe her demeanour, and was subjected to examination-in-chief, cross-examination and re-examination.

H **[35]** I have carefully considered the submissions of both parties, the documentary evidence tendered, and the grounds of judgment of the learned sessions court judge. The central issue is whether the learned sessions court judge erred in assessing SP1's credibility and whether the existence of exhs D45 I and D47 rendered SP1's testimony unreliable to the extent that the conviction was unsafe.

[36] It is trite law, as established by the Federal Court in *Herchun Singh & Ors v Public Prosecutor* [1969] 2 MLJ 209, that the trial judge's assessment of

witness credibility must be accorded proper weight and consideration by an appellate court. The trial judge has the distinct advantage of seeing and hearing witnesses testify, observing their demeanour, and assessing the manner in which they give evidence. An appellate court should be slow to disturb findings of fact relating to witness credibility unless there are substantial and compelling reasons for doing so. This principle was reaffirmed in *Lai Kim Hon & Ors v Public Prosecutor* [1981] 1 MLJ 84 (Federal Court).

[37] In the present case, the learned sessions court judge had the opportunity to observe SP1 when she testified on 7 July 2022. SP1 gave sworn oral testimony and was subjected to cross-examination by counsel for the accused. The learned trial judge was satisfied with SP1's demeanour and found her to be a credible witness. At para [69] of her grounds of judgment, the learned sessions court judge specifically noted that 'SP1 hadir dan memberi keterangan secara natural (*boleh dilihat daripada rakaman RVT*)' ('SP1 appeared and gave evidence naturally (this can be seen from the RVT recording)'). This direct observation of SP1's demeanour whilst testifying is a critical factor that carries substantial weight in assessing credibility.

[38] The timing of the emergence of exhs D45 and D47 is highly significant. Exhibit D45 was made on 23 January 2024, only six days after the accused was called to enter his defence on 17 January 2024. SP1 gave her oral testimony during the prosecution stage. The trial then continued for almost two years before the prosecution closed its case. Throughout this entire period, the accused was present in court and had full knowledge of SP1's testimony and the evidence of all other prosecution witnesses. If the 'new version' contained in D45 and D47 were true, the accused would have known of it and it would have been put to the prosecution witnesses during cross-examination in accordance with the principle in *Wong Swee Chin v Public Prosecutor*. However, this was never done.

[39] The learned sessions court judge specifically addressed this critical failure in her grounds of judgment. At para [62] of her judgment, the learned trial judge stated:

> SP1 merupakan saksi pertama yang dipanggil dan selepas itu prosiding telah berlangsung selama hampir dua tahun sebelum pendakwaan menutup kes. Sepanjang tempoh tersebut tiada langsung isu yang dinyatakan oleh SP1 dalam akuan bersumpahnya dibangkitkan oleh pihak pembelaan melalui soal balas terhadap saksi-saksi pendakwaan. Kenyataan-kenyataan SP1 dalam akuan bersumpahnya sepatutnya juga berada dalam pengetahuan OKT. Hanya selepas mahkamah membuat keputusan memanggil OKT membela diri, SP1 tiba-tiba muncul untuk dipanggil semula bagi mengubah keterangan yang telah diberikan. Mahkamah oleh itu mendapati bahawa tindakan OKT menggunakan SP1 untuk menukar keterangan adalah satu tindakan terdesak bagi membantunya dalam kes ini.

[40] The learned trial judge's observation is unassailable. The fact that throughout the nearly two-year trial, no mention was ever made of the 'new version' strongly indicates that it did not exist until after the accused was called to enter his defence. This timing strongly suggests afterthought and possible collusion between the accused and SP1.

[41] The three-year gap between the first police report (P1) and the second report (D47) further underscores the suspect nature of these documents. The statutory declaration and second police report only surfaced after the accused was called to enter his defence. This timing strongly suggests afterthought and possible collusion between the accused and SP1. As the learned sessions court judge observed at para [60] of her grounds, 'segala apa yg dinyatakan oleh saksi SP1 dalam akuan bersumpah (eksh D45) adalah satu keterangan baru yang bercanggah dengan keterangan-keterangan saksi-saksi lain yang telah dipanggil sebelum ini' ('everything stated by witness SP1 in the statutory declaration (exh D45) is new evidence that contradicts the evidence of other witnesses who were called previously'). The learned trial judge properly considered the suspicious timing and contradictory nature of these belated documents in assessing their reliability.

[42] The accused's reliance on s 91 of the Evidence Act 1950 and the case of *Ah Mee v Public Prosecutor* is misplaced. Section 91 provides that when the terms of a contract or grant or other disposition of property have been reduced to the form of a document, no evidence shall be given in proof of the terms of such matter except the document itself or secondary evidence of its contents. This provision applies to matters required by law to be reduced to the form of a document, and is typically invoked in cases involving documentary contracts, deeds, and similar formal instruments.

[43] Section 91 has no application to a case such as the present where the issue concerns the credibility of a witness who gave sworn oral testimony in court and subsequently made contradictory out-of-court statements in the form of a statutory declaration and police report. The principle that documentary evidence prevails over oral evidence applies where both relate to the same transaction and the document is the primary evidence of that transaction. It does not apply where the issue is the credibility and reliability of different versions given by the same witness at different times under different circumstances. The learned sessions court judge properly recognised this distinction in assessing the relative weight of SP1's sworn oral testimony against the subsequently-produced documents.

[44] Furthermore, the documentary evidence in D45 and D47 was contested evidence. These documents were tendered through witnesses (SD3 and SD4) who had no personal knowledge of their contents. Neither of these

witnesses could speak to the truth or accuracy of what SP1 had stated in the statutory declaration or the police report. They merely received the documents and recorded them in accordance with statutory procedures. The reliability and veracity of these documents were disputed by the prosecution, who challenged them given the suspicious timing and circumstances of their creation.

[45] In contrast, SP1's oral testimony in court was given under oath, in the presence of the learned sessions court judge who could observe her demeanour, and was subjected to examination-in-chief, cross-examination and re-examination. While exhs D45 and D47 are not hearsay in the technical sense (as they are statements by SP1 herself rather than statements of a third party reported by SP1), the principle underlying the hearsay rule remains instructive. Statements made outside court lack the safeguards of sworn testimony given in the presence of a judge and subjected to cross-examination. As Lord Normand stated in *Teper v R* [1952] AC 480 (Privy Council), hearsay 'is not the best evidence, and it is not delivered on oath. The truthfulness and accuracy of the person whose words are spoken by another witness cannot be tested by cross-examination and the light which his demeanour would throw on his testimony is lost'.

[46] The learned sessions court judge properly considered these factors. At para [67] of her grounds of judgment, the learned trial judge noted:

> Berdasarkan kenyataan-kenyataan yang diberikan dalam akuan bersumpah SP1 tersebut, SP1 telah memberikan satu versi baru berbanding keterangan asal. Versi baru ini bercanggah dan bertentangan dengan keterangan saksi-saksi pendakwaan yang lain. Sebagaimana yang diketengahkan oleh mahkamah ini di atas, mahkamah berpandangan keterangan SP1 (versi baharu) ini sama sekali tidak memberi nilai tambah pada keterangan sedia ada di hadapan mahkamah ini. Mahkamah selanjutnya berpandangan bahawa permohonan OKT untuk memasukkan keterangan SP1 yang baharu ini dibuat tidak lain hanya bagi tujuan untuk melengahkan, menyusahkan, meremehkan proses mahkamah atau bagi menggagalkan suatu keadilan itu tercapai.

[47] The learned judge's observation that SP1's new version 'completely failed to add value to the existing evidence before the court' and that the accused's application to introduce SP1's new testimony 'was made for no other purpose than to delay, vex, belittle the court process, or defeat the ends of justice' reflects a careful and considered assessment of the true nature of the application. This finding demonstrates that the learned trial judge fully appreciated that the late emergence of these documents was a tactical manoeuvre designed to undermine the prosecution's case after the accused had heard the entirety of the evidence.

[48] At para [68] of her grounds of judgment, the learned trial judge addressed the specific circumstance that although SP1 had made a police report on 21 March 2024, the court was informed that SP1 completely failed to provide proper cooperation when called by the investigating officer to have her statement recorded. The learned judge observed in para [61] that it was 'sangat jelas kepada mahkamah berkenaan kenyataan-kenyataan yang dibuat oleh SP1 ini sebagai tidak benar dan tidak boleh dipercayai' ('very clear to the court that the statements made by SP1 were untrue and could not be believed').

[49] At para [61], the learned judge noted that in her police report, SP1 alleged that the investigating officer and the deputy public prosecutor had threatened and coerced her in giving evidence. The learned judge observed:

> Semasa memberi keterangan di mahkamah iaitu ketika disoal balas oleh peguambela, SP1 telah menyatakan bahawa ketika membuat laporan polis beliau menceritakan kepada pegawai yang menerima laporan apa yang berlaku. SP1 kemudian telah diminta untuk membaca laporan yang ditaip oleh pegawai berdasarkan apa yang diceritakan dan SP1 telah mengesahkan kandungan laporan tersebut.

[50] The learned judge observed that if what SP1 alleged was true, SP1 should have provided full cooperation to the investigating officer to investigate the matter. However, SP1 evaded and refused to be investigated. This lack of cooperation raises serious questions about the genuineness of SP1's purported change of testimony and strongly undermines the credibility of the allegations contained in D45 and D47.

[51] At para [70], the learned sessions court judge concluded:

> Mahkamah oleh itu bersetuju dengan apa yang dinyatakan dalam afidavit jawapan TPR bahawa seandainya permohonan ini dibenarkan ini adalah peluang atau satu 'pintu belakang' untuk OKT mengubah naratif perjalanan kes ini atau akan memberi satu ruang dan peluang kepada pihak pembelaan untuk mewujudkan satu versi cerita baru yang tidak menyokong kesinambungan versi pendakwaan yang lalu yang telah pun dibuktikan oleh pihak pendakwaan.

[52] The learned trial judge's recognition that allowing the application would provide the accused with a 'backdoor' to change the narrative of the case and create a new version of events inconsistent with the prosecution's proven version demonstrates a sophisticated understanding of the tactical nature of the application. This analysis is entirely correct. To allow the accused to introduce a completely new and contradictory version through SP1 after the close of the prosecution case, when that version was never put to any prosecution witness during the nearly two-year trial, would fundamentally undermine the integrity of the trial process and the rules governing cross-examination.

[53] The learned sessions court judge was entitled to conclude, as she did, that the accused's use of SP1 to alter her testimony was a desperate measure to assist his case and that the application was made in bad faith. The learned trial judge's findings are supported by multiple converging factors:

(a) the suspicious timing of D45 and D47;

(b) the complete failure to put the 'new version' to any prosecution witness during cross-examination over nearly two years of trial;

(c) SP1's refusal to cooperate with investigations into her own allegations of coercion;

(d) the learned judge's direct observation that SP1 gave evidence naturally with no sign of pressure when she testified; and

(e) the fundamental inconsistency between the 'new version' and all other prosecution evidence. These findings demonstrate no error of law or fact. Rather, they reflect a careful, thorough, and legally sound assessment of the credibility issues raised by the belated emergence of D45 and D47.

[54] I find no error in the learned sessions court judge's assessment of SP1's credibility. The learned trial judge applied the correct legal principles, considered all relevant factors, and reached conclusions that were entirely justified by the evidence and circumstances of the case. The conviction based upon SP1's sworn testimony is safe and satisfies all legal requirements. The learned trial judge was in the best position to assess SP1's credibility, having observed her testify, and her findings on credibility are entitled to great weight. The accused has failed to demonstrate any substantial or compelling reason for this court to disturb those findings.

[55] The learned sessions court judge did not err in finding SP1 to be a credible witness. This ground of appeal is dismissed.

Whether the conviction based on circumstantial evidence was unsafe

[56] The accused submitted that the learned sessions court judge erred in finding that the prosecution had proven its case beyond reasonable doubt based on circumstantial evidence.

[57] The accused contended that the evidence presented alternative inferences. The accused specifically relied on the principles in *Karam Singh v Public Prosecutor* [1967] 2 MLJ 25, which establish that the duty of the court is to acquit if the evidence is consistent with any other rational hypothesis than the guilt of the accused or if the defence narrative raises a reasonable doubt. The accused argued that the possibility existed that the victim may have been injured by a third party or that the incident may have occurred accidentally.

[58] The prosecution submitted that the learned sessions court judge correctly applied the legal principles governing circumstantial evidence. The prosecution relied on *Jitweer Singh a/l Ojagar Singh v Public Prosecutor* [2016] 4 MLJ 525, which established that the law allows for a conviction based purely on circumstantial evidence, and that the cumulative effect of all evidence must lead to an irresistible conclusion that it was the accused who committed the crime with no other reasonably possible explanation. The prosecution emphasised that where the prosecution case relies mainly or wholly upon circumstantial evidence, the question is whether all the circumstances taken together form a complete chain leaving no reasonable ground for a conclusion consistent with the innocence of the accused.

[59] The prosecution submitted that the cumulative effect of all the evidence leads to an irresistible conclusion that the accused caused grievous hurt to the victim. The evidence is inconsistent with any reasonably possible hypothesis other than the guilt of the accused. The chain of circumstantial evidence is complete and unbroken, leaving no reasonable ground for a conclusion consistent with innocence.

[60] The prosecution drew this court's attention to the learned sessions court judge's careful and thorough evaluation of the circumstantial evidence. At para [51] of her grounds of judgment, the learned sessions court judge made the following finding:

> Mahkamah mendapati kesemua elemen pertuduhan berjaya dibuktikan. Walau pun mangsa tidak dapat memberikan keterangan (telah dilakukan prosiding secara zoom di hadapan mahkamah ini menunjukkan mangsa masih terlantar tidak bermaya, tidak mampu bercakap dan/atau tidak mampu memberi respon) untuk menceritakan apa yang berlaku namun berdasarkan keterangan ikut keadaan yang diambil secara kumulatif membentuk suatu rantaian keterangan yang menjurus kepada OKT dan tidak orang lain yang melakukan kesalahan tersebut.

[61] This finding demonstrates that the learned trial judge properly assessed all the evidence as a whole and correctly concluded that the circumstantial evidence, when taken cumulatively, formed a chain of evidence pointing to the accused and no one else who committed the offence. The prosecution submitted that although there was no direct evidence in this case, the circumstantial evidence was strong and solid enough to support the conviction. At para [52] of her grounds, the learned judge concluded:

> Berdasarkan penilaian maksima mahkamah ke atas keterangan yang dikemukakan, mahkamah mendapati kesemua intipati pertuduhan telah berjaya dibuktikan dan oleh itu pihak pendakwaan telah membuktikan kes prima facie terhadap tertuduh.

[62] The prosecution invited this court to compare the circumstantial evidence in this case (as found by the learned sessions court judge) with the

defence versions put forward. The prosecution submitted that it can be seen that all three defence versions advanced by the accused in this case are not reasonable hypotheses or can be categorised as reasonably possible explanations. The prosecution submitted that the learned sessions court judge was correct in rejecting the accused's version as it was not something that could be said to be a reasonable explanation.

[63] It is trite law that a conviction may be sustained on circumstantial evidence alone, provided that the chain of circumstances is complete and points irresistibly to the guilt of the accused person. The legal principles governing the evaluation of circumstantial evidence are well-established. In *Jitweer Singh a/l Ojagar Singh v Public Prosecutor*, the Court of Appeal comprehensively set out the applicable principles. As stated in para [9] of that judgment, a conviction based on circumstantial evidence is good in law. The court stated:

> The principle gleaned from these authorities is that a conviction based on circumstantial evidence is good in law if the cumulative effect of all the evidence leads to an irresistible conclusion that it was the accused who committed the crime, with no other reasonably possible explanation; put another way, the evidence must be inconsistent with any hypothesis other than the guilt of the accused, the circumstances relied upon must be fully established, and if any of the circumstances proved are consistent with the innocence of the accused or the chain of continuity of the circumstances is broken, the accused is entitled to the benefit of the doubt, such that there must be a chain of evidence so consistent and complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

[64] Where the prosecution relies on circumstantial evidence, the governing principle, as restated in *Jitweer Singh a/l Ojagar Singh v Public Prosecutor*, is that the court must be satisfied not only that the death or offence was the result of a criminal act, but that the cumulative effect of the evidence leads to an irresistible conclusion that it was the accused who committed the offence, with no other reasonably possible explanation consistent with innocence. However, this does not require the prosecution to eliminate every conceivable or speculative doubt. As explained in *Mat v Public Prosecutor* [1963] 1 MLJ 263 (High Court), disbelief of the defence does not by itself justify a conviction; the accused is entitled to an acquittal if, upon the whole of the evidence, a reasonable doubt remains. *Public Prosecutor v Saimin & Ors* [1971] 2 MLJ 16 (High Court) further clarifies that the prosecution case must be proved to the extent that it must be true and not merely that it may be true, and that a reasonable doubt must arise from the evidence or the absence of evidence, and not from fanciful, imaginary, or speculative possibilities. Read together, these authorities establish that what must be excluded are reasonable doubts and reasonably possible hypotheses consistent with innocence, not fanciful or imaginary doubts.

[65] The accused's reliance upon *Karam Singh v Public Prosecutor* is acknowledged, but the principle must be applied to the specific facts and evidence in this case. The question is not merely whether an alternative hypothesis can be theoretically imagined, but whether such alternative hypothesis is reasonably possible given the totality of the evidence.

[66] The learned sessions court judge undertook a careful and comprehensive evaluation of the circumstantial evidence in this case. The learned judge properly considered whether the circumstances taken together formed a complete chain pointing irresistibly to the accused's guilt, and whether any reasonably possible alternative hypothesis existed. The learned trial judge's analysis demonstrates a proper application of the legal principles governing circumstantial evidence and a thorough consideration of all the evidence adduced during the lengthy trial proceedings.

[67] I turn now to examine the circumstantial evidence chain in this case. The evidence established the following facts:

(a) on 4 May 2021, the accused contacted SP1 and requested her assistance;

(b) the accused brought SP1 to his apartment at Scott Tower, Larkin, Johor Bahru;

(c) when SP1 arrived at the apartment at approximately 9am, she found the victim (the accused's wife, Jahidah bt Nordin) lying unconscious in the bedroom;

(d) SP1 testified that the accused informed her that he had fought with his wife using his hands at approximately 6am that morning;

(e) only the accused and the victim were present in the apartment when SP1 arrived; and

(f) SP1 assisted in bringing the victim to the hospital where extensive injuries were discovered.

[68] These factual findings were carefully made by the learned sessions court judge after observing the witnesses testify and evaluating their credibility. The learned trial judge had the distinct advantage of seeing and hearing the witnesses, particularly SP1, and was therefore in the best position to assess the reliability of their testimony. As established by the Federal Court in *Herchun Singh*, an appellate court should be slow to disturb such findings of fact unless there are substantial and compelling reasons for doing so.

[69] The medical evidence established catastrophic injuries consistent with high-velocity trauma. SP10 (Dr Jayarajkumaran a/l S Thankarasoo), who treated the victim in the Intensive Care Unit at Hospital Sultan Aminah Johor

Bahru, testified that the victim suffered severe head injury without skull fracture but with intracranial bleeding of subdural type. The medical report prepared by SP8 (Dr Tan Zi Han) documented subdural haemorrhage at the left convexity, left tentorial and posterior interhemispheric region with mass effect, right tenth rib fracture, facial bone fracture, and lumbar transverse process fractures. The victim's Glasgow Coma Scale was E1V1M3, indicating profound loss of consciousness. The victim required emergency left decompressive craniectomy with clot evacuation, and SP8 testified that without this surgical intervention, the victim would likely have died.

[70] The victim suffered extensive injuries to multiple parts of her body including redness over the left periauricular region, abrasion over the left cheek, dried blood in the nostrils, bruising over the right lower lip, haematoma over the right temporal region, abrasion wound over the right forehead, minimal haematoma over the lateral aspect of the suborbital with subconjunctival haemorrhage, minimal bruising over the right anterior forearm, and haematoma over the left forehead. The extent and severity of these injuries demonstrate that significant force was applied to cause such catastrophic harm.

[71] The learned sessions court judge properly evaluated this medical evidence and correctly appreciated its significance in establishing both the severity of the injuries inflicted and the degree of force that must have been applied. The medical evidence formed a critical link in the chain of circumstantial evidence, establishing that the victim's injuries were not the result of an accident or minor altercation but rather the product of a sustained and violent assault.

[72] The evidence further established that the accused was the only person with access to the apartment at the material time. The CCTV evidence showed SP1's visits to the apartment on the morning of 4 May 2021 at approximately 9am and 11am. When SP1 entered the apartment with the accused, only the accused, SP1, and the unconscious victim were present. No third party was present at the scene.

[73] This evidence of exclusive access and opportunity is of critical importance in circumstantial evidence cases. The learned sessions court judge properly considered this evidence in concluding that no third party could have been responsible for the victim's injuries. The absence of any evidence of third-party presence, combined with the accused's own admission to SP1 that he had fought with his wife at 6am, forms a powerful link in the chain of circumstantial evidence pointing to the accused's guilt.

[74] The evidence of SP6 (Fazariah bt Nordin), the victim's younger sister, corroborated SP1's account. SP6 testified that she received a telephone call

from the accused on 5 May 2021 at 1.15pm informing her that her sister was in the ICU at Hospital Johor Bahru. When SP6 asked what happened, the accused stated that they had fought and he pushed the victim, causing her to hit her head.

[75] The learned sessions court judge properly considered this additional admission by the accused to SP6. This statement, coming from the accused himself to the victim's own sister, constitutes a further admission that corroborates SP1's evidence and strengthens the chain of circumstantial evidence. The consistency between what the accused told SP1 (that he fought with his wife at 6am) and what he told SP6 (that they fought and he pushed her) reinforces the reliability of both accounts and demonstrates that the accused's own admissions form part of the complete chain of circumstantial evidence.

[76] The evidence of SP2 (Nurul Azzwina bt Yahya), the victim's former housemate, established that fights between the accused and the victim were not a new occurrence as they had occurred frequently before. This pattern of domestic conflict provides important context for understanding the events of 4 May 2021.

[77] The learned sessions court judge was entitled to take this evidence of prior domestic violence into account as part of the overall factual matrix. Evidence of a history of domestic conflict between the accused and the victim makes the prosecution's case more probable and undermines any suggestion that the victim's injuries could have been caused accidentally or by a third party. The pattern of prior altercations provides context that supports the inference that the catastrophic injuries sustained on 4 May 2021 resulted from yet another violent episode in this troubled marital relationship.

[78] Significantly, the accused did not challenge SP1's testimony during cross-examination regarding the fact that he fought with his wife using his hands at approximately 6am on the morning of the incident. As established in *Wong Swee Chin v Public Prosecutor*, failure to cross-examine a witness on a crucial part of the case amounts to acceptance of the witness's testimony. This principle is applicable in both civil and criminal trials and is a rule of essential justice, not merely a technical rule of evidence. The accused's failure to challenge this material fact amounts to acceptance that there was a physical altercation between the accused and the victim using hands at approximately 6am on 4 May 2021.

[79] The learned sessions court judge properly took note of this failure to cross-examine SP1 on this crucial aspect of her testimony. The rule in *Wong Swee Chin v Public Prosecutor* establishes that a party's case must be put to the

opponent's witnesses during cross-examination. The accused's failure to challenge SP1's evidence about the fight at 6am during the nearly two-year trial is particularly significant. It was only after the accused was called to enter his defence that alternative versions began to emerge through exhs D45 and D47. The learned trial judge was entitled to draw an adverse inference from this failure to put the accused's case to SP1 when she testified, and properly treated the accused's failure to cross-examine as acceptance of SP1's evidence on this critical point.

[80] The accused's conduct following the incident is also relevant. The evidence established that the accused attempted to evade arrest when the police attempted to apprehend him. The testimony of ASP Hassanul Izwat bin Yaacob (SP5) who led the arrest team indicated that when the arrest team tried to arrest the accused, he attempted to flee and collided with and crashed into the arrest team members. A scuffle ensued as the arrest team worked to apprehend the accused. As noted by the learned sessions court judge and affirmed in *Lim Kee Fu v Public Prosecutor and another appeal* [2020] 12 MLJ 260 (Court of Appeal), conduct in fleeing from the scene is admissible under s 8 of the Evidence Act 1950 as such conduct has a direct bearing on the fact in issue. The accused's attempt to flee gives rise to a strong inference regarding consciousness of guilt.

[81] The learned sessions court judge properly considered the accused's flight from the police as part of the overall evidential picture. Evidence of flight is admissible as conduct from which an inference of guilt may be drawn. A person who is innocent would ordinarily have no reason to flee from the police. The accused's attempt to evade arrest, involving physical collision with members of the arrest team, is conduct entirely inconsistent with innocence and consistent only with consciousness of guilt. The learned trial judge was entitled to treat this evidence as yet another link in the complete chain of circumstantial evidence pointing to the accused's culpability.

[82] The accused's specific argument regarding alternative hypotheses based upon exhs D45 and D47 warrants specific consideration in the context of circumstantial evidence principles. As I have found earlier in addressing the issue of whether the learned sessions court judge erred in finding that SP1 was a credible witness, these documents emerged suspiciously late in the proceedings and their reliability was contested by the prosecution. They do not constitute reasonably possible alternative hypotheses but rather represent afterthought attempts to introduce contradictory versions that should have been raised during the proper course of trial.

[83] The learned sessions court judge expressly considered the defence narratives advanced through exhs D45 and D47. In her grounds of judgment

at para [67], she found that the affidavit evidence given by SP1 introduced a new version that departed from the original testimony, was internally inconsistent, and was at variance with the evidence of the other prosecution witnesses. The learned judge concluded that this new version did not enhance or add any probative value to the evidence already before the court. She further held that the application by the accused to adduce this new evidence was not made bona fide, but was intended to was made for no other purpose than to delay, vex, undermine the court process, or defeat the ends of justice.

[84] The learned trial judge properly concluded that SP1's new version contradicted the testimony of other prosecution witnesses and completely failed to add value to the existing evidence before the court. The learned judge further found that the accused's application to introduce SP1's new testimony was made for no other purpose than was made for no other purpose than to delay, vex, undermine the court process, or defeat the ends of justice. These versions did not constitute reasonably possible alternative hypotheses but rather represented belated attempts to manufacture doubt.

[85] As the prosecution correctly submitted, when the circumstantial evidence in this case (as found by the learned sessions court judge) is compared with the defence versions put forward, it becomes clear that the three versions advanced by the accused are not reasonable hypotheses that could be categorised as reasonably possible explanations. The learned trial judge was entirely justified in rejecting these versions as lacking credibility and not raising any reasonable doubt as to the accused's guilt.

[86] The principle in *Karam Singh v Public Prosecutor*, relied upon by the accused, requires that if there are circumstances which weaken the case for the prosecution, the court has a duty to acquit. However, this principle does not assist the accused in the present case. The circumstances relied upon by the accused, namely the belated emergence of exhs D45 and D47 containing contradictory versions that were never put to the prosecution witnesses during the lengthy trial, do not weaken the prosecution's case. On the contrary, the suspicious timing and circumstances surrounding these documents, properly analysed by the learned sessions court judge, actually strengthen the inference of guilt by demonstrating the accused's resort to fabricated alternative versions only after hearing the entirety of the prosecution's case.

[87] The cumulative effect of all the evidence leads to an irresistible conclusion that the accused caused grievous hurt to the victim. The evidence is inconsistent with any reasonably possible hypothesis other than the guilt of the accused. The chain of circumstantial evidence is complete and unbroken, leaving no reasonable ground for a conclusion consistent with innocence.

[88] The learned sessions court judge properly evaluated all the evidence in accordance with the principles governing circumstantial evidence. The learned judge correctly identified the links in the evidential chain:

(a) the accused was the only person with access to the victim at the material time;

(b) the accused admitted to SP1 that he had fought with his wife using his hands at 6am;

(c) the accused admitted to SP6 that they had fought and he pushed the victim, causing her to hit her head;

(d) the medical evidence established catastrophic brain injuries requiring emergency neurosurgery;

(e) the evidence established a pattern of prior domestic violence between the accused and the victim;

(f) the accused attempted to flee when the police sought to arrest him; and

(g) the accused failed to challenge crucial aspects of SP1's testimony during cross-examination, amounting to acceptance of that evidence.

[89] When these circumstances are considered together, as the learned sessions court judge properly did, they form a complete chain that points irresistibly and exclusively to the accused's guilt. There is no gap in the chain, no missing link, no reasonable alternative explanation. The learned trial judge's conclusion that the prosecution had proven its case beyond reasonable doubt on the basis of this circumstantial evidence was entirely correct and displays no error of law or fact.

[90] The conviction is safe. There is no misdirection by the learned sessions court judge in her appreciation of the circumstantial evidence. The alternative hypothesis suggested by the accused, namely that he was made a scapegoat or that third parties were involved, is not a reasonably possible explanation but amounts to unfounded speculation that is contradicted by the established evidence. As the learned sessions court judge correctly found, the accused's defence versions are not reasonable hypotheses but merely represent belated and fabricated attempts to avoid responsibility for his criminal acts.

[91] The learned sessions court judge's careful analysis demonstrates that she properly applied the test articulated in *Jitweer Singh a/l Ojagar Singh v Public Prosecutor*, namely whether 'the cumulative effect of all the evidence leads to an irresistible conclusion that it was the accused who committed the crime with no other reasonably possible explanation'. The learned judge correctly concluded that the evidence was 'inconsistent with any other hypothesis than that of the guilt of the accused' and that the circumstances established 'a chain

so far consistent and complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused'.

[92] In conclusion, the learned sessions court judge correctly applied the legal principles governing circumstantial evidence and properly concluded that the evidence established the accused's guilt beyond reasonable doubt. The conviction based upon circumstantial evidence is safe and satisfies all legal requirements. The learned trial judge's comprehensive and careful evaluation of the evidence demonstrates no error in law or fact. The learned judge properly identified the links in the chain of circumstantial evidence, correctly assessed whether those links formed a complete and unbroken chain, and rightly concluded that the chain pointed irresistibly to the accused's guilt with no reasonably possible alternative hypothesis. This ground of appeal is dismissed.

Whether the learned sessions court judge erred in refusing to recall SP1

[93] The accused contended that the learned sessions court judge erred in fact and in law in refusing the application to recall prosecution witness SP1 pursuant to ss 425 and 173(j)(iii) of the Criminal Procedure Code for cross-examination following the emergence of exhs D45 and D47 during the defence stage. The accused submitted that the primary basis for the application to recall SP1 was the existence of exhs D45, D47 and IDD44, all of which SP1 was the maker, and which documents did not exist during the prosecution case. The accused argued that s 173(j)(iii) uses the mandatory term 'shall be allowed' and therefore the court was obliged to allow the recall of SP1.

[94] The accused relied upon the decision of the High Court in *Public Prosecutor v Chan Kok Poh* [2021] MLJU 1979; [2021] MLRHU 1523, particularly paras [70] and [98], which established a litmus test for the exercise of powers under ss 173 and 425 of the Criminal Procedure Code. The High Court held that whilst the court is empowered to deploy the immense power of recall, it cannot be exercised wantonly or callously but must be premised on: (a) admissible evidence; and (b) the recall is necessary for a just decision of the case.

[95] The accused further submitted that the refusal to recall SP1 violated his constitutional right to a fair trial under art 5(1) of the Federal Constitution.

[96] The prosecution submitted that the learned sessions court judge properly exercised her discretion in refusing the applications to recall SP1. The prosecution emphasised that both ss 425 and 173(j)(iii) confer discretionary powers upon the trial court, and the exercise of that discretion should not be disturbed on appeal unless it was exercised improperly, arbitrarily, or in a manner that resulted in injustice.

[97] The prosecution highlighted several factors that justified the learned sessions court judge's decision:

(a) the suspicious timing of exhs D45 and D47, which emerged only after the accused was called to enter his defence;

(b) the failure of the accused to put the 'new version' to any prosecution witness during cross-examination in accordance with the principle in *Wong Swee Chin v Public Prosecutor*;

(c) the fact that SP1 failed to cooperate with the investigating officer when attempts were made to record her statement regarding the second police report;

(d) the learned sessions court judge's observation that SP1 had given evidence naturally when she testified, with no sign of pressure or duress; and

(e) the evident tactical nature of the application, which appeared designed to introduce an afterthought version after the accused had heard the entirety of the prosecution case.

[98] The prosecution argued that the refusal to recall SP1 did not violate the accused's right to a fair trial, as the accused had ample opportunity during the two-year trial to cross-examine SP1 and all other prosecution witnesses.

[99] At the outset, I must address the accused's reliance on s 173(j)(iii) of the Criminal Procedure Code. This reliance is fundamentally misconceived and represents a complete misapplication of the law. Section 173 falls under Chapter XVII of the Criminal Procedure Code, which is entitled 'Of the Procedure in Summary Trials before Magistrates'. Section 173(j)(iii) specifically provides:

> When the accused is called upon to enter on his defence, he may produce his evidence and shall be allowed to recall and cross-examine any witness present in the Court or its precincts ...

[100] The critical point that the accused has overlooked is that s 173(j)(iii) applies only to summary trials before magistrates, not to full trials before the sessions court. This was a full trial before the sessions court, not a summary trial before a magistrate. A full trial in the sessions court is governed by Chapter XX of the Criminal Procedure Code, in particular ss 178–183A, which prescribe a distinct and separate procedural regime. The accused's argument that s 173(j)(iii) uses mandatory language ('shall be allowed') and therefore obliged the sessions court to recall SP1 is wholly misconceived, as that provision has no application whatsoever to sessions court trials.

[101] The proper provision governing the power to recall witnesses in sessions court trials is s 425 of the Criminal Procedure Code, which provides:

> Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

[102] The language of s 425 is instructive. The section uses the word 'may' in relation to the court's general power to summon or recall witnesses. The word 'may' confers a discretionary power, not a mandatory obligation. It is only where 'his evidence appears to (the court) essential to the just decision of the case' that the word 'shall' is used. Even then, it is for the court to determine whether the evidence appears essential to a just decision. The power under s 425 is therefore discretionary, and the exercise of that discretion must be assessed on the particular facts and circumstances of each case.

[103] The proper exercise of the discretion under s 425 has been carefully circumscribed by judicial interpretation. In *Public Prosecutor v Chan Kok Poh*, the High Court established that the discretion to recall a witness, though broad, cannot be exercised arbitrarily. The court held that two conditions must be satisfied: (a) the evidence sought must be admissible evidence; and (b) the recall must be necessary for a just decision of the case.

[104] Furthermore, the proper exercise of the discretion under s 425 requires the court to act judicially based on the facts of each case, with the main consideration being whether the additional evidence is essential to a just decision. As held by the Supreme Court in *Ramli bin Kechik v Public Prosecutor* [1986] 2 MLJ 33, the discretion to be exercised under s 425 depends on the facts of each case, and the main consideration is the essentiality of the additional evidence to a just decision of the case. If there is apprehension of justice failing by an erroneous acquittal or by an erroneous conviction, the court would be justified in exercising its discretion in calling for additional evidence under this section. However, a just decision under this section does not mean a decision in favour of the defence. The discretion should be exercised sparingly and only when it is essential to the just decision of the case. As observed in *Suhani binti Mat Daud v Public Prosecutor* [2011] MLJU 655, where the defence had ample opportunity to cross-examine witnesses on all material points during trial, the refusal to recall a witness does not constitute an error. The discretion is not intended to provide an accused person with an opportunity to fill gaps in the defence or to introduce new theories after having heard the entirety of the prosecution case.

[105] The learned sessions court judge carefully analysed both applications to recall SP1 in her comprehensive grounds of judgment. In para [54] of her

judgment, the learned judge recorded that after the court's decision to call upon the accused to enter his defence, but before the accused gave evidence, the following actions were taken by the accused:

(a) an application was made to the court to recall SP1 under s 425 of the Criminal Procedure Code for cross-examination;

(b) a second application was made to recall SP1 under s 173 of the Criminal Procedure Code for cross-examination; and

(c) a notice of alibi was filed.

[106] The learned sessions court judge meticulously set out the grounds for both applications in para [55] of her judgment. The application at encl 82 (filed on 8 February 2024) was based on allegations that:

(a) SP1 had sworn a statutory declaration stating that the evidence she gave in court was prepared by the prosecution and that she was threatened to give evidence and answer questions based on the witness statement (PSSP1) given to her; and

(b) the contents in the witness statement were untrue. The application at encl 98 (filed on 25 June 2024) repeated substantially similar grounds.

[107] In dealing with the first application under s 425, the learned sessions court judge applied the correct legal principles and cited the case of *Suhani binti Mat Daud v Public Prosecutor* for the proposition that 'where the defence had ample opportunity to cross-examine witnesses on all the material points of the case and hence the refusal of the learned trial judge to disallow the application to recall PW 1 under s 425 of the Criminal Procedure Code is not an issue'. Having regard to these principles, the learned sessions court judge concluded at para [64] of her judgment:

> Atas faktor-faktor yang dinyatakan di atas, mahkamah menolak permohonan OKT di Lampiran 82.

[108] In dealing with the second application purportedly made under s 173, the learned sessions court judge set out the provisions of s 173(j)(iii) and s 173(l)(i) at paras [65] and [66] of her judgment. Whilst these provisions, being part of Chapter XVII governing summary trials before magistrates, did not strictly apply to the sessions court trial, the learned sessions court judge's substantive analysis and findings properly addressed the exercise of discretion under s 425 which is the applicable provision. The question under s 425 is whether the recall is 'essential to the just decision of the case'. An application made for improper purposes such as vexation, delay, or to defeat the ends of justice cannot be said to be essential to a just decision.

[109] Having carefully considered the 'new version' advanced by SP1 in the statutory declaration and police report, the learned sessions court judge found in para [67] of her judgment that SP1 had departed from the original testimony by introducing a fresh account that was inconsistent and in conflict with the evidence of the other prosecution witnesses. The learned judge further concluded that this revised version did not add any value to the evidence already before the court.

[110] The learned sessions court judge went on to make a further and more significant finding in the same paragraph that the application by the accused to adduce the new evidence from SP1 was not made for a legitimate purpose, but was intended to was made for no other purpose than to delay, vex, undermine the court process, or defeat the ends of justice.

[111] This finding goes to the heart of the inquiry under s 425. An application made for such improper tactical purposes, to delay proceedings, to vex the prosecution, or to defeat justice by introducing a fabricated 'new version' after hearing the prosecution case, cannot be said to be 'essential to the just decision of the case' within the meaning of s 425. The learned sessions court judge's finding that the application was made for these improper purposes provided a sound basis for refusing it.

[112] The learned sessions court judge also considered a highly significant matter concerning SP1's conduct after making the second police report. At para [68] of her judgment, the learned judge recorded:

> Dalam permohonan ini, OKT telah melampirkan laporan polis yang dibuat oleh SP1 pada 21 March 2024. Namun mahkamah ini telah dimaklumkan bahawa SP1 langsung tidak memberikan kerjasama yang sewajarnya apabila dipanggil Pegawai Penyiasat untuk diambil keterangan iaitu sebagaimana dideposkan oleh Pegawai Penyiasat Inspektor Safwan bin Fadzullah Suhaimi dalam afidavit jawapan kepada afidavit sokongan OKT yang diikrarkan pada 8 Julai 2024 (Kandungan 101). Dalam Afidavit Jawapan tersebut, deponen menyatakan bahawa SP1 telah gagal untuk memberikan keterangan bagi tujuan siasatan. Deponen telah menghubungi SP1 melalui nombor yang diberi namun tidak dijawab oleh SP1. Deponen seterusnya telah pergi ke rumah SP1 namun didapati tiada sesiapa di rumah.

[113] The learned sessions court judge drew a powerful inference from this conduct. At para [69] of her judgment, the learned judge observed:

> Dalam laporan polisnya, SP1 telah mendakwa bahawa Pegawai Penyiasat kes (SP11) dan TPR yang mengendalikan kes ini di pertingkat awal telah mengugut dan memaksa beliau dalam memberikan keterangan. Sekiranya benar apa yang diadukan oleh SP1, SP1 perlulah memberikan kerjasama sepenuhnya kepada Pegawai Penyiasat kes untuk menyiasat. Namun SP1 telah mengelak dan tidak

mahu disiasat. Ini jelas memberikan satu gambaran atau satu inference bahawa terdapat perancangan atau muslihat antara OKT dan SP1 dalam hal ini.

[114] The learned sessions court judge enjoyed the significant advantage of having observed SP1 testify in person. Having watched SP1 give evidence over the course of the trial, The learned judge was in the best position to assess whether there were any signs that SP1 had been pressured or threatened when she gave her original testimony. At para [69] of her judgment, the learned sessions court judge made a clear finding on this crucial point:

Sebagai hakim yang mendengar kes ini dan melihat demeanor SP1 semasa memberi keterangan, tidak terlihat tanda-tanda seperti SP1 dipaksa atau diugut dalam memberikan keterangan.

[115] This finding is of critical importance. It directly contradicts the central allegation underlying the accused's applications to recall SP1, namely, that SP1 had been threatened and forced to give her original testimony. The learned sessions court judge's finding on this point is entitled to significant deference. As held by the Federal Court in *Herchun Singh*, the trial judge's assessment of witness credibility and demeanour deserves considerable weight on appeal because the trial judge has the distinct advantage of observing the witness testify.

[116] In the present case, I am satisfied that the learned sessions court judge properly exercised her discretion under s 425 in refusing both applications to recall SP1. Multiple factors support this conclusion:

(a) as I have found earlier in dealing with issue 1, exhs D45 and D47 emerged suspiciously late in the proceedings. D45 (the statutory declaration) was made on 23 January 2024, only six days after the accused was called to enter his defence on 17 January 2024. D47 (the police report) was made on 21 March 2024, two months later. This timing strongly suggests that these documents represent an afterthought designed to bolster the defence case after the accused had heard the entirety of the prosecution evidence. The learned sessions court judge was fully entitled to take this suspicious timing into account in exercising her discretion;

(b) throughout the nearly two-year trial, the accused never once put the 'new version' contained in D45 and D47 to any prosecution witness during cross-examination. This failure is significant. The principle in *Wong Swee Chin* establishes that failure of the defence to cross-examine prosecution witnesses on matters subsequently raised constitutes a serious procedural deficiency. The accused's failure to put this 'new version' to the witnesses during the trial suggests either that the 'new version' did not exist at the time or was not within the accused's knowledge. Either way, it

demonstrates that the application to recall SP1 was an attempt to introduce matters that should have been raised during the trial proper;

(c) the investigating officer's evidence that SP1 failed to cooperate when attempts were made to record her statement regarding the second police report raised serious questions about the genuineness of SP1's purported change of testimony. If SP1 genuinely believed she had been threatened and forced to give false testimony, one would expect her to cooperate fully with the investigation into her allegations. Her failure to do so strongly suggests that the allegations were not genuine. The learned sessions court judge was entitled to draw the inference that there was 'planning or conspiracy' between the accused and SP1;

(d) the learned sessions court judge's finding that SP1 gave evidence naturally and showed no signs of being pressured or threatened when she testified is of paramount importance. This finding undermines the entire basis for the applications to recall SP1. The learned sessions court judge was in the unique position of having observed SP1 testify, and her assessment of SP1's demeanour is entitled to considerable weight;

(e) the learned sessions court judge specifically found that SP1's 'new version' did not add any value to the existing evidence before the court. This finding is critical. Even if the court were minded to recall SP1, if her 'new version' adds nothing of value to the case, the recall cannot be said to be 'essential to the just decision of the case' as required by s 425;

(f) most significantly, the learned sessions court judge made a specific finding that the application was made for no other purpose than to was made for no other purpose than to delay, vex, undermine the court process, or defeat the ends of justice. This finding is critical to the proper exercise of discretion under s 425. Where a court finds that an application to recall a witness is made not to advance the truth or to assist the court in reaching a just decision, but rather for improper tactical purposes such as delay, vexation, or to defeat justice, such an application cannot be 'essential to the just decision of the case' and must be refused. The learned sessions court judge's finding provided a sound and compelling basis for refusing the application under s 425; and

(g) allowing the application would effectively permit the accused to have a 'second bite at the cherry', giving him the chance to introduce new theories and challenge evidence after having heard the entirety of the prosecution case. This would undermine the integrity of the trial process and create an unfair advantage for the defence. The proper time to put one's case to the prosecution witnesses is during the prosecution case, not after the defence has been called and the accused has heard all the evidence against him.

[117] The learned sessions court judge properly applied the legal principles set out in *Ramli bin Kechik v Public Prosecutor* and *Public Prosecutor v Chan Kok Poh*. The learned judge correctly recognised that the discretion to recall a witness must be exercised judicially and sparingly, and only where the additional evidence is essential to a just decision of the case. Having carefully examined the 'new version' presented by SP1 and having regard to all the circumstances, including the suspicious timing, the failure to put the new version to witnesses during trial, SP1's lack of cooperation with the investigation, and the learned judge's own observations of SP1's demeanour when testifying, the learned sessions court judge was entirely justified in concluding that the recall of SP1 was not essential to a just decision of the case and that the applications were made for improper purposes.

[118] The accused's submission that the refusal to recall SP1 violated his constitutional right to a fair trial under art 5(1) of the Federal Constitution is without merit. Article 5(1) guarantees that no person shall be deprived of life or personal liberty save in accordance with law. The right to a fair trial is implicit in this guarantee. However, a fair trial does not mean a trial conducted according to the wishes of the accused, nor does it entitle the accused to have every application granted.

[119] The right to a fair trial encompasses the right to present a defence, to cross-examine prosecution witnesses, and to call witnesses in one's defence. All these rights were fully accorded to the accused. The accused had ample opportunity during the two-year trial to cross-examine SP1 and all other prosecution witnesses. The accused was permitted to call his defence and presented his case. The refusal of the trial court to allow a witness to be recalled in circumstances where: (a) the application was made after the accused had heard the entirety of the prosecution case; (b) the 'new version' was never put to any prosecution witness during cross-examination; (c) the witness failed to cooperate with the investigation; (d) the trial judge observed no signs of pressure or duress when the witness testified; and (e) the trial judge found that the application was made to delay, vex, or defeat the ends of justice, does not amount to a denial of a fair trial. Indeed, allowing such an application might itself undermine the fairness of the trial process by permitting the defence to introduce completely new theories after having the advantage of hearing the prosecution case in full.

[120] I am also fortified in this conclusion by the observation that SP1 could not be traced when the applications were made. The investigating officer's affidavit evidence established that SP1 did not answer phone calls and was not found at her residence. Even if the court were minded to allow the application, it would have been futile as SP1 was not available. The accused's assertion during oral submissions that SP1 was working at a hotel and could easily be

brought to court was never substantiated by any evidence. If the accused knew where SP1 could be found, he should have brought this information to the investigating officer's attention or provided evidence of SP1's whereabouts to the court. The fact that he did not do so further undermines the credibility of the applications.

[121] In conclusion, the learned sessions court judge's decision to refuse both applications to recall SP1 was not only within her discretion but was the correct exercise of that discretion on the facts of this case. The learned judge carefully analysed the legal principles, meticulously examined the grounds for the applications, considered all relevant factors including the suspicious timing, the failure to put the new version to witnesses during trial, SP1's lack of cooperation, and The learned judge's own observations of SP1's demeanour, and reached a well-reasoned conclusion that the applications were made for improper purposes and that the recall of SP1 was not essential to a just decision of the case. This ground of appeal is dismissed.

Whether SP1's evidence constituted inadmissible hearsay

[122] The accused submitted that SP1's evidence constituted inadmissible hearsay evidence. The accused relied on the principle established in *Nagarujun a/l Arjunan v Public Prosecutor and another appeal* [2021] 2 MLJ 599; [2021] MLRAU 4 (Court of Appeal), which held that the general rule is that hearsay evidence is not admissible as proof of a fact which has been stated by a third person. The rule against the admission of hearsay evidence is fundamental because it is not the best evidence and is not delivered on oath. The truthfulness and accuracy of the person whose words are spoken by another witness cannot be tested by cross-examination.

[123] The accused contended that SP1's evidence, particularly in relation to the first police report (P1), constituted hearsay evidence and should not have been admitted or relied upon by the learned sessions court judge. The accused specifically pointed to lines 9 and 10 of Police Report P1 which stated: 'SAYA TELAH BERTANYA KEPADA MANI APA YANG TELAH BERLAKU DAN MANI BERITAHU BAHAWA BELIAU TELAH BERGADUH DENGAN ISTERINYA PADA JAM 6.00 PAGI'. The accused submitted that the sentence 'I asked and Mani told me' constituted hearsay evidence that fell outside the exceptions permitted by s 32 of the Evidence Act 1950, and that it was therefore highly improper for the learned trial judge to have taken SP1's evidence into account as admissible evidence.

[124] The prosecution submitted that the accused's contention was fundamentally misconceived. The prosecution emphasised that SP1 had given sworn testimony describing her experience when she was at the crime scene.

SP1's evidence in court was not hearsay evidence. What SP1 conveyed was what she saw, what she heard, when she herself was present there. She was not a third party to that incident or event. She was there.

[125] The prosecution further emphasised that it was a firm and strong principle that oral evidence is best evidence, and that exhs D45 and D47 were contested exhibits as their reliability and authenticity were disputed by the prosecution. To compare these contested documentary exhibits, whose veracity was challenged, with sworn evidence given by SP1 under oath, which was subjected to cross-examination and where the learned sessions court judge saw the witness in the witness box, was improper.

[126] The prosecution further submitted that throughout the entire proceedings, no objection on grounds of hearsay was raised when SP1 gave her evidence. Moreover, referencing the entirety of SP1's evidence and Police Report P1, it was clear that SP1 was the individual contacted by the accused after the incident occurred. SP1 went to the crime scene with the accused and found the victim lying unconscious, and assisted in bringing the victim to hospital with the accused's presence. SP1's presence at the crime scene was never denied by the accused but was in fact agreed to by the accused.

[127] Having considered the submissions of both parties and the authorities cited, I find that the learned sessions court judge did not err in admitting SP1's oral evidence and Police Report P1. The accused's contention that SP1's evidence constituted inadmissible hearsay evidence is fundamentally misconceived and demonstrates a misunderstanding of the distinction between hearsay evidence and direct evidence of facts personally witnessed.

[128] The classic definition of hearsay evidence, as articulated in *Subramaniam v Public Prosecutor* [1956] 1 MLJ 220 (Privy Council) and applied by Augustine Paul J in *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)* [1999] 2 MLJ 1 (High Court), makes clear that evidence is hearsay and inadmissible when the object is to establish the truth of what is contained in a statement made by a person not called as a witness. Conversely, evidence is not hearsay when it is proposed to establish not the truth of the statement, but the fact that it was made, particularly when such fact is relevant to the mental state and conduct of the witness or other persons. As Augustine Paul J stated in *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)* at p 168:

> The law relating to hearsay evidence is well settled. As Mr LMD de Silva said in *Subramaniam v Public Prosecutor* [1956] 1 MLJ 220 at p 222: ... Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the

statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.

[129] In the present case, SP1 testified as to matters within her direct personal knowledge and observation. The evidence establishes that SP1 was contacted by the accused on the morning of 4 May 2021 requesting her assistance. The accused came to fetch SP1 and brought her to his residence at Scott Tower, which was the crime scene. Upon arrival, SP1 saw the victim lying unconscious in the master bedroom. SP1 then asked the accused what had happened, and the accused informed her that he had fought with the victim at around 6am that morning. SP1 subsequently assisted in transporting the victim to Hospital Sultanah Aminah.

[130] All of this evidence relates to matters that SP1 personally witnessed, heard, or participated in. SP1 was not reporting what a third party told her about events that occurred in her absence. Rather, she was testifying about her own direct observations and experiences. The fact that SP1 was present at the crime scene with the accused, found the victim in a critical condition, and assisted in transporting the victim to hospital was never disputed. Indeed, these facts were agreed to by the accused himself.

[131] The sessions court and the prosecution in its submissions relied on the principle in *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)*, which confirms that statements constituting admissions by an accused person are admissible as original evidence when adduced against that person. The statement by the accused to SP1 that he had fought with his wife using his hands at 6am constitutes a substantive admission by the accused, and SP1's testimony regarding this admission was properly admitted and considered by the learned sessions court judge.

[132] In relation to Police Report P1 made by SP1 on 5 May 2021, this document serves to record the information that SP1 provided to the police regarding the incident. The police report itself is admissible as evidence of the fact that a report was made and of what was reported. It is not hearsay because it is SP1's own statement, not a report of what someone else told her. As the prosecution correctly submitted, a first information report is not substantive evidence to prove a fact but is, at most, of corroborative value, as established in *Teo Siaw Peng v Public Prosecutor* [1993] 2 MLJ 364 (High Court).

[133] Furthermore, and most importantly, SP1 herself testified in court and was subjected to cross-examination regarding all the matters contained in the police report. The accused had full opportunity to challenge any aspect of SP1's

evidence, including the contents of the police report. Throughout the nearly two-year trial, during which SP1 testified on 7 July 2022, no objection whatsoever was raised regarding hearsay when SP1 gave her evidence. The accused's belated attempt to characterise SP1's sworn oral testimony as hearsay only after calling his defence represents an afterthought and a fundamental misapprehension of the law.

[134] The prosecution submitted, and I agree, that since SP1, the maker of Police Report P1, was called as a witness, gave sworn oral testimony, and was subjected to rigorous cross-examination, the primary safeguards of the hearsay rule were satisfied. As established in *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)*, when the object is to establish the fact that a statement was made rather than its truth, the evidence is original and admissible. This principle applies with full force here, as SP1's presence allowed the accused to test the reliability and accuracy of her observations firsthand.

[135] The learned sessions court judge correctly understood and applied these principles. At the trial, when the prosecution tendered SP1's evidence and Police Report P1, no objection on grounds of hearsay was raised by the defence. This is significant because it demonstrates that experienced counsel recognised at the time that SP1's evidence was not hearsay but direct testimony about matters within her personal knowledge. The learned trial judge properly admitted SP1's sworn oral testimony and considered it alongside all other evidence in the case.

[136] The learned sessions court judge specifically addressed SP1's credibility and the reliability of her police report at para [61] of her grounds of judgment, noting that when SP1 gave evidence in court and was cross-examined by counsel for the defence, 'SP1 telah menyatakan bahawa ketika membuat laporan polis beliau menceritakan kepada pegawai yang menerima laporan apa yang berlaku. SP1 kemudian telah diminta untuk membaca laporan yang ditaip oleh pegawai berdasarkan apa yang diceritakan dan SP1 telah mengesahkan kandungan laporan tersebut'. This evidence, given under oath and subjected to cross-examination, established that Police Report P1 accurately reflected what SP1 personally witnessed and experienced at the crime scene.

[137] At para [62] of her grounds of judgment, the learned sessions court judge made a critical finding regarding the timing and circumstances of the accused's belated hearsay challenge:

> SP1 merupakan saksi pertama yang dipanggil dan selepas itu prosiding telah berlangsung selama hampir 2 tahun sebelum pendakwaan menutup kes. Sepanjang

tempoh tersebut tiada langsung isu yang dinyatakan oleh SP1 dalam Akuan Bersumpahnya dibangkitkan oleh pihak pembelaan melalui soal balas terhadap saksi-saksi pendakwaan.

[138] This finding is devastating to the accused's present argument. If SP1's evidence was truly hearsay, this fundamental objection would have been raised at trial when SP1 testified. The complete absence of any hearsay objection during the nearly two-year trial demonstrates that the accused himself recognised that SP1's evidence was not hearsay but direct testimony about matters within her personal knowledge.

[139] The learned sessions court judge, who had the distinct advantage of observing SP1's demeanour when she testified, found that SP1 gave evidence naturally and there was no sign that she was pressured or threatened. This assessment of credibility, based on direct observation of the witness in court giving evidence under oath and being cross-examined, carries far greater weight than any document produced three years after the event under suspicious circumstances.

[140] The prosecution's submission at trial that SP1 was not a third party to the incident but was present at the crime scene, witnessed the victim's critical condition, heard the accused's admission, and participated in transporting the victim to hospital was plainly correct. The argument that SP1's evidence is hearsay in its entirety is unreasonable and demonstrates a fundamental misunderstanding of the nature of hearsay evidence. As the prosecution emphasised in their written submissions and oral arguments before this court, what SP1 conveyed in her testimony was what she saw and what she heard when she herself was present at the scene. She was not reporting second-hand information from a third party about events that occurred in her absence.

[141] The learned sessions court judge's implicit rejection of any hearsay objection, which was never raised during trial, was entirely correct as a matter of law. SP1's evidence was direct testimony about her personal observations and experiences, including the critical admission made by the accused to her. The admission of this evidence was proper, and reliance upon it in reaching the verdict was entirely appropriate.

[142] SP1's evidence was not hearsay evidence. SP1 testified as to matters within her direct personal knowledge and observation. The accused's statement to SP1 constitutes an admission and is admissible under s 17 of the Evidence Act 1950. Police Report P1, being SP1's own first information report about matters within her personal knowledge, coupled with the fact that SP1 herself testified in court and was subjected to cross-examination, does not constitute hearsay. The learned sessions court judge did not err in admitting and relying

upon SP1's evidence. This ground of appeal is dismissed.

Whether investigative deficiencies warranted acquittal

[143] The accused raised several alleged investigative deficiencies: (a) the failure to investigate the implications of a T-shirt found at the scene (exh P21(A)) which, upon analysis, yielded no DNA from either the accused or the victim; (b) the alleged inaccuracy in the crime scene sketch which failed to depict a rear door; and (c) the failure to investigate a report made by SP1 three years after the original investigation. The accused contended that these deficiencies created reasonable doubt and warranted acquittal.

[144] The prosecution submitted that the alleged investigative deficiencies raised by the accused do not establish a plausible alternative hypothesis. The absence of DNA on one T-shirt, when numerous other exhibits contained incriminating DNA evidence, does not suggest third-party involvement. The omission of the rear door from a rough sketch, when its existence and locked condition were established through sworn testimony, does not create uncertainty about access to the premises. The failure to investigate a report lodged three years after the investigation was completed does not undermine the original investigation. The prosecution emphasised that the accused's argument regarding the T-shirt was raised to support his version that the house was broken into and the victim was injured by a third party, but this matter was comprehensively considered and properly rejected by the learned sessions court judge in her grounds of judgment at paras [39]–[44].

[145] It is well-established that not every investigative deficiency or procedural irregularity will render a conviction unsafe. The central question is whether the alleged deficiency or irregularity has occasioned a failure of justice or has rendered the conviction unsafe. The learned sessions court judge properly applied this principle of materiality and comprehensively addressed each of the alleged investigative deficiencies raised by the accused, correctly finding them to be either immaterial or afterthoughts.

DNA testing on one T-shirt (exh P21(A))

[146] The accused complains that one particular T-shirt found at the scene (exh P21(A)) yielded no DNA results upon analysis. The accused argued that the existence of this T-shirt, which was devoid of DNA from either the victim or himself, suggested the presence of a mysterious third party at the crime scene and that the police failed to investigate this lead.

[147] The learned sessions court judge comprehensively addressed this argument at paras [39]–[44] of her grounds of judgment. As submitted by the

prosecution, during the investigation of this case, the police seized various items from the crime scene to assist the investigation. Among the items seized was a black-coloured T-shirt marked as exh P21(A). This T-shirt was sent to the Chemistry Department and the Chemist ('SP7') conducted analysis on the exhibit. The analysis by SP7 found that there was no DNA from the accused, the victim, or any third party detected on the T-shirt. Put simply, no DNA was detected on P21(A).

[148] The learned sessions court judge was correct in finding that the accused's argument was illogical and without merit. The fact that the investigating officer seized the T-shirt demonstrates diligence in investigating the crime scene. As the prosecution correctly submitted, to allege that the investigating officer failed in his duty would require showing that the investigating officer did not go to the crime scene or did not seize any items. The very fact that the investigating officer seized the T-shirt shows that the investigating officer made efforts to investigate the crime scene comprehensively.

[149] Furthermore, the evidence established that numerous other exhibits were subjected to DNA testing. From the exhibit list in Vol 3 of the Record of Appeal, it can be seen that from exh P20 to exh P28A, various types of items were seized in this case including bedsheets, towels, pillowcases, toothbrushes, and clothing. Most of these exhibits that were seized contained DNA, either the victim's DNA or the accused's DNA. Only this one T-shirt had no DNA whatsoever, neither the victim's DNA, nor the accused's DNA, nor any third party's DNA. It was empty of all DNA.

[150] This was the evidence given by the chemist, SP7, that the T-shirt was devoid of DNA. SP7's evidence further clarified that it is not uncommon for items sent to the Chemistry Department to yield no DNA results after analysis. Whether DNA will be found depends on the condition of the exhibit. SP7 testified that in certain cases, no DNA is found. The absence of DNA on one particular item, when numerous other exhibits contained incriminating DNA evidence consistent with the prosecution's case, does not create reasonable doubt. This is particularly so when the totality of the other evidence points conclusively to guilt.

[151] The accused's contention that the existence of this T-shirt without DNA indicates the presence of a third party is speculative and illogical. The learned sessions court judge properly rejected this argument. As addressed in detail in the issue relating to the the safety of conviction based on circumstantial evidence above, the accused's alternative hypothesis regarding a break-in and third-party involvement was not a reasonably possible explanation but rather represented unfounded speculation contradicted by the

established evidence. The suggestion that a T-shirt devoid of all DNA somehow proves third-party involvement defies logic and is inconsistent with the scientific evidence.

Crime scene sketch (exh P39)

[152] The accused contends that the crime scene sketch was inaccurate because it did not depict a rear door, and that this constituted a failure to properly investigate the scene. The learned sessions court judge comprehensively addressed this argument and properly found it to be without merit.

[153] As the prosecution submitted, the crime scene sketch, by the very nature of its name, is a sketch. It is a rough preliminary sketch, not a detailed architectural plan or a scale drawing. In this case, photographs of the crime scene were marked as exhibits, and CCTV footage was also marked as exhibits. Throughout the period when the investigating officer (SP11) was called to give evidence, the issue of the sketch was never raised. Questions were put to the investigating officer regarding the points of access to the house, and the investigating officer clearly explained that there were two points of access: the front door and the rear door. The rear door showed no signs of forced entry, was in good condition, and was locked from the inside.

[154] The learned sessions court judge was correct in finding that this was clear-cut evidence. To allege that an error in the drawing of the sketch caused a failure by the investigating officer is illogical. The investigating officer testified under oath regarding the existence and condition of the rear door. The existence of the rear door and its locked condition were established through sworn testimony. When the investigating officer SP11 gave evidence at trial, the sketch prepared by him was marked as exh P39. Apart from the sketch, in this case, photographs of the crime scene were also tendered as exh P2(1–19). The defence never questioned SP11 regarding the sketch or objected to the marking of the sketch as an exhibit.

[155] In any event, SP11 gave sworn evidence, and during cross-examination, SP11 provided evidence regarding the existence of a rear sliding door at the crime scene. Moreover, SP11 explained his investigation of the rear door, namely that it was in a locked condition and showed no signs of forced entry. The omission of the rear door from the rough sketch does not create any uncertainty about access to the premises. As the learned sessions court judge properly found, there arose no material issue from any defect in the sketch drawn by SP11. Even with any defect in the sketch, it did not in any way affect the prosecution's case.

[156] The accused's complaint regarding the sketch is properly characterised as an afterthought which is a belated attempt to create reasonable doubt where none exists. The sketch was admitted in evidence without objection, and the material facts regarding access to the premises were comprehensively established through sworn testimony that was not challenged at trial.

Failure to investigate SP1's second report (exh D47)

[157] The accused complains that the investigating officer failed to properly investigate the second police report made by SP1 on 21 March 2024 (exh D47). As I have found earlier in addressing the first issue, this report was made three years after the original investigation was completed and only emerged after the accused was called to enter his defence.

[158] The prosecution submitted that the investigating officer whom the accused presumably referred to was SP11, Inspector Salaihudin Azual bin Razali. Throughout this case, before it was charged in court, the investigating officer had conducted all necessary investigations. Exhibits D45 and D47 were made in the year 2024, three years after the investigation was completed. If one examines exhs D45 and D47, these exhibits contain complaints against the investigating officer himself. The police report D47 was specifically assigned to another investigating officer, Inspector Safwan bin Fadzullah Suhaimi.

[159] As submitted by the prosecution, Inspector Safwan, through his affidavit-in-reply filed in the proceedings, deposed to all the efforts made in investigating the police report. Inspector Safwan explained that the police could not locate SP1 to record her statement regarding that report. This caused the police report to be categorised as ROR (Refer to Other Report). It is therefore unreasonable for the accused to allege that the investigation by the investigating officer ('SP11') was incomplete. It is clear that SP11 was not assigned to investigate D47, and in any event, SP1 could not be located for further investigation.

[160] As I observed earlier in addressing the first issue, the investigating officer did attempt to record SP1's statement but she failed to cooperate. The learned sessions court judge found that although SP1 had made a police report on 21 March 2024, the court was informed that SP1 completely failed to provide proper cooperation when called by the investigating officer to have her statement recorded. In her police report, SP1 alleged that the investigating officer and the deputy public prosecutor had threatened and coerced her in giving evidence. The learned judge observed that if what SP1 alleged was true, SP1 should have provided full cooperation to the investigating officer to investigate the matter. However, SP1 evaded and refused to be investigated.

[161] In any event, the contents of exh D47 were properly before the trial court, and the learned sessions court judge gave appropriate weight to it in her assessment. As I concluded in addressing Issue 1, the learned judge was entitled to find that the accused's use of SP1 to alter her testimony was a desperate measure to assist his case and that the production of D47 was made in bad faith.

[162] For the foregoing reasons, I find that the accused has failed to establish any material investigative deficiency warranting appellate intervention. The investigation conducted was thorough and adequate. The learned sessions court judge comprehensively considered each of the alleged investigative deficiencies in her grounds of judgment at paras [39]–[44] and properly found them to be without merit. The learned judge's findings were based on a proper evaluation of the evidence and a correct application of legal principles.

[163] The alleged shortcomings identified by the accused are either immaterial, properly explained by the evidence, or constitute afterthoughts that do not genuinely affect the safety of the conviction. The fact that one particular item yielded no DNA does not create reasonable doubt when numerous other exhibits contained incriminating DNA evidence. The omission from a rough sketch of a feature whose existence and condition were established through sworn testimony does not undermine the prosecution's case. The failure to investigate a belated report made three years after the investigation was completed, particularly when the maker of that report failed to cooperate, does not constitute an investigative deficiency.

[164] There is no error in the learned sessions court judge's findings on these matters. The learned judge properly evaluated the evidence and correctly concluded that none of the alleged deficiencies were material or affected the safety of the conviction. Not every investigative deficiency or procedural irregularity will render a conviction unsafe. The question is whether the alleged deficiency has occasioned a failure of justice or rendered the conviction unsafe. In this case, it has not.

[165] This ground of appeal is dismissed.

Whether reasonable doubt was raised at the end of the defence case

[166] The accused submitted that a reasonable doubt had been successfully raised at the end of the defence case. The accused relied on the principle enunciated in *Pendakwa Raya lwn Mohd Saifuddin bin Aziz* [2021] MLJU 246; [2021] MLRHU 138, citing the Federal Court decision in *Balachandran v Public Prosecutor* [2005] 2 MLJ 301, which established that proof beyond reasonable doubt involves two aspects: the legal burden on the prosecution to

prove its case beyond reasonable doubt, and the evidential burden on the accused to raise a reasonable doubt. Both burdens can only be fully discharged at the end of the whole case when the defence has closed its case.

[167] The accused argued that the evidential burden on the accused is merely to present a narrative sufficient in the court's assessment to raise a reasonable doubt, even if that narrative is not believed. The accused contended that the narrative of the defence case, namely that he had been made a scapegoat by third parties with motives to victimise him, including the individual referred to as 'Tuan Shah', had raised a reasonable doubt about the prosecution's case, particularly when considered together with the emergence of exhs D45 and D47.

[168] The prosecution submitted that the accused had not raised any reasonable doubt. The prosecution emphasised that the defence version presented during the defence case (involving alleged third-party involvement, the theory of 'Tuan Shah', and alternative explanations) was not a reasonably possible explanation but rather represented unfounded speculation contradicted by the established evidence. The prosecution contended that the alternative hypotheses advanced by the accused amounted to mere imaginary or possible doubts, not reasonable doubts within the meaning of established legal principles.

[169] I begin by setting out the established legal principles governing the burden and standard of proof at the conclusion of the defence case. It is trite law that under s 182A of the Criminal Procedure Code, at the conclusion of the trial, the court shall consider all the evidence adduced and shall decide whether the prosecution has proved its case beyond reasonable doubt.

[170] The Federal Court in *Balachandran v Public Prosecutor* comprehensively explained the two-stage burden in criminal trials. Proof beyond reasonable doubt involves two aspects: the legal burden on the prosecution to prove its case beyond reasonable doubt, and the evidential burden on the accused to raise a reasonable doubt. Both these burdens can only be fully discharged at the end of the whole case when the defence has closed its case.

[171] The meaning of 'reasonable doubt' was elucidated in *Public Prosecutor v Saimin & Ors* [1971] 2 MLJ 16, where the court emphasised that reasonable doubt is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. This distinction between reasonable doubt and mere possible or imaginary doubt is critical to the proper assessment of whether the defence case has successfully discharged the evidential burden.

[172] In *Mat v Public Prosecutor*, Suffian J (as His Lordship then was) articulated the proper test to be applied at the end of the defence case. The court held:

> If you accept the explanation given by or on behalf of the accused, you must of course acquit. But this does not entitle you to convict if you do not believe that explanation, for he is still entitled to an acquittal if it raises in your mind a reasonable doubt as to his guilt, as the onus of proving his guilt lies throughout on the prosecution. If upon the whole evidence you are left in a real state of doubt, the prosecution has failed to satisfy the onus of proof which lies upon it.

[173] The decision in *Mat v Public Prosecutor* helpfully set out a structured approach for courts to follow:

(a) If you are satisfied beyond reasonable doubt as to the accused's guilt — Convict.

(b) If you accept or believe the accused's explanation — Acquit.

(c) If you do not accept or believe the accused's explanation — *Do not convict but consider the next steps below.*

(d) If you do not accept or believe the accused's explanation and that explanation does not raise in your mind a reasonable doubt as to his guilt — Convict.

(e) If you do not accept or believe the accused's explanation but nevertheless it raises in your mind a reasonable doubt as to his guilt — Acquit.

[174] This framework makes clear that even an unbelieved defence narrative may warrant an acquittal if it raises a reasonable doubt. The critical question is therefore not whether the court believes the defence version, but whether, even if disbelieved, the defence narrative nevertheless raises a reasonable doubt as to guilt when considered against the totality of the evidence.

[175] In the present case, I have carefully considered the defence case and the alternative explanations offered by the accused. The learned sessions court judge properly applied the legal principles governing reasonable doubt and correctly concluded that the accused had failed to raise any reasonable doubt. In her grounds of judgment at para [95], the learned judge found:

> Penelitian dan penilaian mahkamah terhadap pembelaan OKT mendapati OKT telah gagal menimbulkan satu keraguan yang munasabah terhadap kes pendakwaan. Sebagaimana diputuskan dalam kes *Mat v Public Prosecutor* [1963] 1 MLJ 263, setelah mahkamah meneliti dan menimbangkan keseluruhan keterangan, mahkamah mendapati OKT telah gagal untuk menimbulkan sebarang keraguan yang munasabah terhadap kes pendakwaan dan mahkamah berpuashati bahawa pihak pendakwaan telah berjaya membuktikan kes melampaui keraguan yang munasabah (*beyond reasonable doubt*) terhadap OKT.

[176] This finding was preceded by the learned sessions court judge's comprehensive analysis of the circumstantial evidence at para [94] of her grounds of judgment, where the learned judge held:

> Berdasarkan keterangan-keterangan ikut keadaan yang telah dikemukakan, mahkamah mendapati segalanya menjuruskan kepada satu jawapan iaitu OKT adalah orang yang bertanggungjawab menyebabkan kecederaan ke atas mangsa.

[177] The learned sessions court judge's conclusion was firmly grounded in the evidence and accorded with established legal principles. The learned judge properly applied the test in *Mat v Public Prosecutor* by examining whether the defence narrative, even if not believed, nevertheless raised a reasonable doubt. The learned judge found it did not. This finding must be assessed against the totality of the evidence and the nature of the defence case actually presented.

[178] As I have found in addressing the earlier grounds of appeal, the defence case suffered from multiple fatal defects:

(a) the suspicious emergence of exhs D45 and D47 only after the accused was called to enter his defence on 17 January 2024, the complete failure to put the 'new version' to any prosecution witness during cross-examination in accordance with the principle in *Wong Swee Chin v Public Prosecutor*, and SP1's subsequent lack of cooperation with the investigating officer all pointed irresistibly to these documents representing afterthought and possible collusion rather than genuine evidence;

(b) the circumstantial evidence chain was complete and unbroken, pointing irresistibly to the accused's guilt. The learned sessions court judge correctly identified that the totality of the circumstantial evidence pointed to one inescapable conclusion: the accused was responsible for the victim's catastrophic injuries;

(c) the alternative hypotheses suggested by the accused (third-party involvement, the theory of 'Tuan Shah', accidental injury, being made a scapegoat) were not reasonably possible explanations but rather represented unfounded speculation contradicted by the established evidence. These amounted to imaginary or possible doubts, not reasonable doubts; and

(d) the alleged investigative deficiencies were immaterial and did not create any genuine reasonable doubt.

[179] One aspect of the defence case requires specific comment. The accused testified about an individual he referred to as 'Tuan Shah' or ASP Shahrizal, allegedly a police officer who had a relationship with the victim before the victim's marriage to the accused. The accused claimed that Tuan Shah had an

illicit relationship with the victim and harboured a grudge against her, and that Tuan Shah was present during the investigation of this case. The accused suggested he was being made a 'scapegoat' by Tuan Shah and others who had motives to victimise him.

[180] This theory suffers from multiple fatal defects that demonstrate why it cannot constitute a reasonable doubt, even applying the generous test in *Mat v Public Prosecutor*. First, throughout the lengthy prosecution case spanning nearly two years and involving eleven witnesses including the investigating officer, no suggestion was ever put to any prosecution witness about the existence of 'Tuan Shah', or about any illicit relationship, or about the accused being framed or made a scapegoat. This complete failure to put the case accords with the well-established principle in *Wong Swee Chin v Public Prosecutor*. The theory only emerged when the accused gave evidence, three years after the incident occurred in March 2021.

[181] Second, no evidence whatsoever was adduced to substantiate the existence of this individual or to support any of the allegations made. The theory was nothing more than bare assertion unsupported by any objective evidence. Third, the theory defies logic and common sense. If such an individual truly existed and was involved in framing the accused, one would expect some trace of evidence, some witness testimony, or at the very least some contemporaneous complaint or mention of this allegation during the investigation or prosecution stages. The complete absence of any such evidence, coupled with the suspicious timing of this theory's emergence, reveals it for what it is: unfounded speculation designed to cast doubt where none genuinely exists.

[182] Applying the test in *Mat v Public Prosecutor*, even if this court were to disbelieve the 'Tuan Shah' theory entirely (which I do), the critical question remains: does this theory nevertheless raise a reasonable doubt? The answer must be an emphatic no. A theory that emerges only as afterthought, is unsupported by any objective evidence, was never put to prosecution witnesses, and defies logic and common sense cannot constitute a reasonable doubt. It represents precisely the kind of imaginary or possible doubt that *Public Prosecutor v Saimin & Ors* distinguished from reasonable doubt. The prosecution need not negative imaginary or speculative doubts, only reasonable doubts and reasonable hypotheses. The alternative theories advanced by the accused amounted to nothing more than baseless speculation contradicted by the proven evidence.

[183] The totality of the evidence, considered at the end of the whole case after the defence has closed, establishes the accused's guilt beyond reasonable doubt. The defence case has not raised any reasonable doubt. The alternative

explanations offered are not reasonably possible given the totality of the evidence. They represent speculation and conjecture rather than reasonably possible alternatives that could raise a reasonable doubt in the mind of a reasonable person.

[184] The learned sessions court judge properly discharged her duty under s 182A of the Criminal Procedure Code in considering all the evidence, both prosecution and defence, and determining that the prosecution had proved its case beyond reasonable doubt. The learned judge correctly applied the legal principles established in *Mat v Public Prosecutor*, recognising that the evidential burden on the accused was merely to raise a reasonable doubt, not to prove the defence case. Having properly considered whether the defence narrative raised such doubt, The learned judge correctly concluded it did not.

[185] This finding accords entirely with the established evidence. The complete chain of circumstantial evidence pointed irresistibly to one conclusion: the accused caused the catastrophic injuries to the victim. The accused was the only person with access to the apartment at the relevant time. He admitted to SP1 that he had fought with his wife using his hands at approximately 6am The medical evidence established severe brain injuries requiring emergency craniectomy surgery. The accused attempted to flee when police tried to apprehend him. These facts, considered cumulatively, formed a complete and unbroken chain pointing to guilt. The defence theories did not break this chain or create any genuine reasonable doubt.

[186] The learned sessions court judge's finding that the accused failed to raise a reasonable doubt was a finding properly arrived at after careful consideration of all the evidence. The accused has not established any ground to interfere with the conviction on this basis. The learned sessions court judge correctly applied *Mat v Public Prosecutor* and properly concluded that while the accused bore only an evidential burden to raise a reasonable doubt, he had failed to discharge even this burden. The conviction is safe and satisfies all legal requirements.

[187] The submission that a reasonable doubt was successfully raised at the end of the defence case is rejected. This ground of appeal is dismissed.

CONCLUSION ON THE ACCUSED'S APPEAL AGAINST CONVICTION

[188] For all the reasons stated above, I find no merit in any of the grounds raised by the accused in his appeal against conviction. The learned sessions court judge did not err in law or fact in convicting the accused. The conviction is safe and satisfies all legal requirements.

[189] The accused's appeal against conviction is dismissed.

THE PROSECUTION'S APPEAL AGAINST SENTENCE (JA-42H-13–12 OF 2024)

The prosecution's submissions

[190] The learned deputy public prosecutor submitted that the sentence of ten years' imprisonment imposed by the learned sessions court judge was manifestly inadequate and did not reflect the seriousness of the case. The prosecution relied on the principle established in *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256, where the High Court held that an appellate court will not normally alter a sentence unless it is satisfied that the sentence of the lower court is either manifestly inadequate or grossly excessive, or that the lower court clearly erred in applying the correct principles in the assessment of the sentence.

[191] The prosecution submitted that when ss 325 and 326A of the Penal Code are read together, the maximum sentence that may be imposed is imprisonment for a term of 14 years and a fine. Section 326A was enacted in 2014 as an amendment to provide enhanced protection for victims of domestic violence. Reference was made to the parliamentary debates recorded in Hansard DR.22.10.2013 at pp 110–115, which clearly demonstrated Parliament's intention in enacting this amendment was to provide heavier punishment for offences involving domestic violence.

[192] The prosecution emphasised several aggravating factors:

(a) the accused had deliberately caused grievous hurt to his wife, who remains in a comatose state to this day and is being cared for entirely by her sister;

(b) at the time of the incident, the victim was pregnant, a fact which was known and admitted by the accused himself;

(c) the accused's actions not only caused permanent injuries to the victim, but also left a lasting negative impact and prolonged trauma on the victim's family;

(d) the victim requires constant care including milk feeding and diaper changes every four hours. The victim's child suffers from developmental disability as a result of having a mother in a coma, only able to walk at three years old and unable to speak; and

(e) the accused has provided no financial support whatsoever, not even one sen.

[193] The prosecution submitted that considering the catastrophic nature of the injuries, the enhanced sentencing provision under s 326A, and the parliamentary intent to impose heavier punishment for domestic violence, the sentence of ten years was manifestly inadequate.

THE ACCUSED'S SUBMISSIONS

[194] Counsel for the accused submitted that the learned sessions court judge had properly applied the correct legal principles in arriving at the sentence. The learned trial judge had considered all relevant factors including the gravity of the offence, the circumstances of the case, the deterrent effect, and public interest. The sentence of ten years' imprisonment, combined with the remand period already served, was not manifestly inadequate.

[195] Counsel emphasised that the threshold for appellate intervention in sentencing matters is high. Unless the sentence was manifestly inadequate or the trial judge clearly erred in principle, the appellate court should not interfere merely because it might have passed a different sentence. The accused submitted that the prosecution had not discharged its burden of demonstrating that the sentence fell outside the proper range or that there was an error in principle.

ANALYSIS AND DECISION

[196] I have carefully considered the submissions of both parties and have examined the grounds of judgment of the learned sessions court judge in relation to the sentence imposed. The central question before this court is whether the sentence of ten years' imprisonment was manifestly inadequate such as to warrant appellate intervention.

The legal framework for appellate intervention in sentencing

[197] The applicable legal principles governing appellate intervention in sentencing matters are well established. In *Public Prosecutor v Loo Choon Fatt*, the High Court held that an appellate court will not normally alter a sentence unless it is satisfied that the sentence of the lower court is either manifestly inadequate or grossly excessive, or that the lower court clearly erred in applying the correct principles in the assessment of the sentence. The threshold for appellate intervention is therefore a high one. It is a firmly established practice that a court will not alter a sentence merely because it might have passed a different sentence.

The sessions court judge's application of sentencing principles

[198] I note that the learned sessions court judge applied the correct legal framework in arriving at the sentence. The learned judge expressly referred to and applied the principle established in *Public Prosecutor v Jafa bin Daud* [1981] 1 MLJ 315 (High Court). At para [103] of her grounds of judgment, the learned judge cited the principle that:

> 'a sentence according to law' means that the sentence must not only be within the ambit of the punishable section but it must also be assessed and passed in accordance with established judicial principles.

[199] This demonstrates that the learned trial judge was acutely aware that sentencing is not a mechanical exercise of imposing a term within the statutory range, but rather requires careful application of established judicial principles to ensure the sentence is just and appropriate.

[200] The learned sessions court judge also applied the established sentencing principles articulated in *Lim Guan Eng v Public Prosecutor* [1998] 3 MLJ 14. At para [104] of her grounds of judgment, the learned judge cited the Court of Appeal's decision, which held that a court should, when sentencing an accused, take into account all considerations relevant to the case, including:

(a) the gravity of the offence;

(b) the circumstances surrounding the commission of the offence;

(c) the antecedents of the accused;

(d) the deterrent effect that punishment is to have;

(e) any factor that warrants special attention either in favour or against the accused; and

(f) above all, the public interest.

[201] The court in *Lim Guan Eng* and further noted that reasons must be given for imposing a particular sentence to enable an appellate court to ensure that there has been no error in principle. This reflects a proper understanding of the sentencing court's duty to provide a reasoned and transparent decision.

The emphasis on public interest

[202] I find that the learned trial judge applied these principles comprehensively and correctly. The learned judge expressly stated at para [106] of her grounds of judgment:

> Semasa menggunakan budibicara menjatuhkan hukuman, mahkamah telah memberi keutamaan kepada faktor kepentingan awam.

[203] This demonstrates that the learned trial judge properly prioritised public interest as the paramount consideration, in accordance with the sixth principle articulated in *Lim Guan Eng*. The learned judge then identified that the sentence should serve three fundamental purposes:

> Apa yang diharapkan, hukuman tersebut, selain sebagai satu bentuk hukuman balasan (*punitive*) ia juga dapat mencegah OKT daripada mengulangi perbuatan tersebut (*deterrence*) dan dapat merubahnya menjadi insan lebih baik dengan tidak melakukan kesalahan pada masa akan datang (*reformative*) kerana *public interest is best served if he/she/they is/are prompted to turn from criminal ways to a scrupulous living* (rujuk kes *Kenneth John Ball* 35 Cr App R 164).

[204] This demonstrates that the learned trial judge carefully structured the sentence to achieve the interrelated objectives of punishment, deterrence, and reformation, whilst prioritising the public interest. The express reference to *Lim Guan Eng* which cited *R v Ball* (1951) 35 Cr App Rep 164 shows that the learned judge drew upon established authority in identifying the reformative purpose of sentencing.

Consideration of the remand period and statutory maximum

[205] The learned trial judge also took into account the remand period that had already been served by the accused. At para [107] of her grounds of judgment, the learned judge stated:

> Mahkamah menjatuhkan hukuman tersebut setelah turut mengambil kira tempoh reman yang telah dijalani oleh OKT selama satu tahun dua bulan. Bagi kesalahan di bawah ss 325/326A Kanun Keseksaan, jumlah penjara maksima yang boleh dikenakan adalah hanya 14 tahun. Oleh itu mahkamah berpandangan jumlah sepuluh tahun penjara dicampur dengan satu tahun dua bulan tempoh reman adalah satu tempoh pemenjaraan yang munasabah dan cukup untuk memberi pengajaran kepada OKT dan sesiapa diluar sana yang berhasrat melakukan kesalahan yang sama.

[206] This demonstrates that the learned trial judge properly considered the totality of the custodial period to be served, took into account the statutory maximum sentence, and explicitly directed her mind to both specific and general deterrence. The sentence was not imposed in a vacuum, but rather with careful consideration of the remand period already served and the need to impose a sentence that would achieve the objectives of both punishment and deterrence within the statutory limits.

Consideration of victim impact evidence

[207] Significantly, the learned trial judge considered the catastrophic impact of the offence on the victim. The learned judge heard victim impact evidence under s 183A of the Criminal Procedure Code from SP6, Fauziah bt Nordin

(referred to as Fazariah bt Nordin in some documents), the victim's sister. The victim impact statement was heard before sentence was imposed, as recorded in the sessions court grounds of judgment. SP6 provided harrowing evidence of the victim's condition. As recorded in the sessions court grounds at pp 44–45, SP6 stated:

> Assalamualaikum. Saya adik mangsa. Sejak hari pertama lagi saya menjaga dia hingga hari ni. Mangsa tidak boleh bergerak, tidak boleh respon ... sejak 4 tahun lalu. Berak kencing saya uruskan sampai hari ini. Anak mangsa kurang upaya (OKU), impak daripada mak yg koma. Perkembangan sangat lambat, 3 tahun baru boleh berjalan, tidak boleh bercakap. Mangsa sampai hari ini hanya minum susu dan perlu tukar pampers setiap 4 jam, saya uruskan semua. Hal-hal peribadi dia juga saya uruskan, iaitu urusan bank, turun naik JPN uruskan IC, urusan penceraian ... dia macam mayat hidup dekat depan saya. Semua perbelanjaan saya yang uruskan, OKT langsung tidak tanya apa-apa, tidak ada satu sen pun daripada OKT. Anak dia dalam pemerhatian pakar, slow development, follow up dengan pakar dan klinik. Sy penat jaga dia ...

[208] This evidence reveals the true extent of the harm caused by the accused's actions. The victim requires constant care for all basic needs. She cannot move or respond. She has been in this vegetative state for four years. The victim's child has suffered developmental disability as a direct consequence of having a mother in a coma. The accused has provided no financial support whatsoever. The burden of care has fallen entirely upon SP6, who described the victim as being 'like a living corpse'. This is powerful and deeply affecting evidence which the learned trial judge properly took into account.

Recognition of the severity of the offence

[209] The learned trial judge expressly addressed the severity of the offence at para [108] of her grounds of judgment, stating:

> Mahkamah turut berpandangan bahawa tempoh penjara yang lebih ringan adalah tidak munasabah dan tidak justified mengambil kira keseriusan kesalahan yang dilakukan. Tindakan OKT telah sama sekali memadam atau memusnahkan kehidupan mangsa di dunia ini.

[210] This passage demonstrates that the learned trial judge was acutely aware of the gravity of the offence and the catastrophic consequences for the victim. The learned judge expressly rejected the possibility of a lighter sentence, holding that such a sentence would be unreasonable and unjustified given the seriousness of the offence. The stark language employed, namely that the accused had 'completely erased or destroyed the victim's life in this world', reflects the learned trial judge's appreciation of the fact that although the victim remains technically alive, she exists in a permanent vegetative state with no prospect of recovery, no ability to interact with her child, and no quality of life.This is, in practical terms, a destruction of her life.

Proper application of established sentencing principles

[211] Having carefully reviewed the sentencing decision in its entirety, I note that whilst the prosecution has highlighted the legislative intent behind s 326A and the aggravating factors present in this case, the learned sessions court judge was clearly alive to all of these considerations. The trial judge's grounds of judgment demonstrate that the learned judge:

(a) applied the correct legal framework, recognising that a sentence must not only be within the statutory range but must also accord with established judicial principles (*Public Prosecutor v Jafa bin Daud*);

(b) expressly considered and applied the sentencing principles articulated in *Lim Guan Eng v Public Prosecutor*, including the gravity of the offence, the circumstances of the case, the deterrent effect, and above all the public interest;

(c) prioritised public interest and structured the sentence to achieve the interrelated objectives of punishment, deterrence, and reformation;

(d) took into account the remand period already served and the statutory maximum sentence;

(e) heard and considered victim impact evidence which revealed the catastrophic and permanent nature of the victim's injuries, the devastating impact on her child, the complete absence of financial support from the accused, and the immense burden placed upon the victim's family;

(f) explicitly addressed the severity of the offence and the destruction of the victim's life, rejecting the possibility of a lighter sentence as unreasonable and unjustified;

(g) considered both specific and general deterrence, noting that the sentence must teach a lesson to the accused and deter others who might contemplate committing similar offences; and

(h) recognised the domestic violence context, sentencing under s 325 read with s 326A of the Penal Code.

[212] This comprehensive analysis demonstrates that the learned sessions court judge did not err in principle, did not overlook relevant considerations, and did not give undue weight to any particular factor. The sentence was imposed after careful consideration of all relevant factors and in accordance with established sentencing principles.

The sentence falls within the proper range

[213] The sentence of ten years' imprisonment represents approximately 71% of the maximum sentence of 14 years that may be imposed under s 325 read with s 326A of the Penal Code. This is not a lenient sentence. It is a substantial sentence that reflects the seriousness of the offence. The sentence gives effect to the legislative intent behind s 326A to impose heavier punishment for domestic violence offences. The maximum sentence under s 325 alone is seven years, but s 326A increases this to fourteen years for offences involving domestic violence, thereby demonstrating Parliament's intention that such offences should attract significantly enhanced penalties. The sentence of ten years achieves the objectives of punishment and deterrence. It is proportionate to the offence committed, taking into account both the gravity of the offence and the circumstances of the case, including the catastrophic and permanent consequences for the victim and her family.

[214] While I have considerable sympathy for the victim and her family, and while I acknowledge the devastating and permanent consequences of the accused's actions, which have left the victim in a permanent vegetative state, dependent on round the clock care, unable to interact with her child, and described by her sister as 'a living corpse', I am not persuaded that the sentence imposed by the learned trial judge was so inadequate as to warrant appellate intervention. The sentence of ten years' imprisonment, when considered in its totality with the one year and two months' remand period already served, represents a very substantial period of incarceration. It falls well within the range of sentences that a reasonable court, properly directing itself on the law and giving due weight to all relevant considerations, could impose for an offence of this nature and gravity.

The prosecution has not discharged its burden

[215] For these reasons, I find that the prosecution has not discharged its burden of demonstrating that the sentence of ten years' imprisonment was manifestly inadequate or that the learned trial judge erred in principle in arriving at that sentence. The sessions court grounds of judgment reveal a careful, considered, and principled approach to sentencing. The learned trial judge applied the correct legal framework, considered all relevant factors, gave proper weight to the public interest and the need for deterrence, took into account the victim impact evidence and the catastrophic consequences of the offence, and imposed a sentence that reflects the gravity of the offence whilst remaining within the proper range. The sentence adequately addressed the gravity of the offence and the harm caused to the victim. There is no error in principle. The sentence is not manifestly inadequate. The threshold for appellate intervention has not been met.

Conclusion on the prosecution's appeal against sentence

[216] The prosecution's appeal against sentence is dismissed. The sentence of ten years' imprisonment imposed by the learned sessions court judge is affirmed.

CONCLUSION AND ORDERS

[217] In conclusion:

(a) the accused's appeal against conviction and sentence (Appeal No JA-42S-7–12 of 2024) is dismissed. The conviction under s 325 read with s 326A of the Penal Code and the sentence of ten years' imprisonment from the date of conviction (9 December 2024) are affirmed;

(b) the prosecution's cross-appeal against sentence (Appeal No JA-42H-13–12 of 2024) is dismissed. The sentence of ten years' imprisonment from the date of conviction (9 December 2024) is affirmed; and

(c) the stay of execution of sentence previously granted is maintained with modified conditions. The bail amount is increased from RM15,000 to RM25,000. All other conditions of the stay remain unchanged.

[218] Upon the application of counsel for the accused for a stay of execution of sentence and hearing submissions, I ordered that the stay of execution of sentence previously granted be maintained with modified conditions. The bail amount is increased from RM15,000 to RM25,000. All other conditions of the stay remain unchanged.

Both appeals dismissed; conviction and sentence affirmed.

Reported by Dzulqarnain Ab Fatar